179
CLERK'S COPY. 402 909 Sup Ct

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 20

MILK WAGON DRIVERS UNION, LOCAL 753, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA, ET AL., PETITIONERS,

vs.

LAKE VALLEY FARM PRODUCTS, INC., AMALGAMATED DAIRY WORKERS, LOCAL INDUSTRIAL UNION No. 819, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 28, 1940.

CERTIORARI GRANTED APRIL 1, 1940.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1939.

No. .....

MILK WAGON DRIVERS' UNION, LOCAL 753, ET AL.,
Petitioners,

vs.

LAKE VALLEY FARM PRODUCTS, INC., A CORPORATION; LAKE VIEW COOPERATIVE OF WATERTOWN, WISCONSIN, ETC., ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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IN THE

United States Circuit Court of Appeals

For the Second Circuit

No. 5506

LAKE VALLEY FARM PRODUCTS, INC., a corporation, et al.,

vs.

LAKE VIEW FARMERS' CO-OPERATIVE CREAMERY, WISCONSIN, etc., et al.,

Plaintiffs-Appellants,

vs.

MAK-WAHON DISTRICT UNION, LOCAL 754, et al.,

Defendants-Appellees.

IN THE

United States Circuit Court of Appeals
For the Seventh Circuit

No. 6900

LAKE VALLEY FARM PRODUCTS, INC., A CORPORATION; LAKE VIEW COOPERATIVE OF WATERTOWN, WISCONSIN, ETC., ET AL.,

Plaintiffs-Appellants,

vs.

MILK WAGON DRIVERS' UNION, LOCAL 753, ET AL.,

Defendants-Appellees.

Counsel for Plaintiffs-Appellants:
MR. ARTHUR R. SEELIG.

Counsel for Defendants-Appellees:
MR. DAVID A. RISKIND,
MR. ABRAHAM W. BRUSSELL.

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1 Pleas in the District Court of the United States for the Northern District of Illinois, Eastern Division, begun and held at the United States Court Room, in the City of Chicago, in said District and Division, before the Honorable Philip L. Sullivan, District Judge of the United States for the Northern District of Illinois on the fifteenth day of December, in the year of our Lord one thousand nine hundred and thirty-eight, being one of the days of the regular November Term of said Court, begun Monday, the seventh day of November, and of our Independence the one hundred sixty-third year. Placita.

Present:

Honorable Philip L. Sullivan, District Judge.
William H. McDonnell, U. S. Marshal.
Henry W. Freeman, Clerk.

Filed May 21, 1938.

2 IN THE DISTRICT COURT OF THE UNITED STATES.

Northern District of Illinois, Eastern Division.

Lake Valley Farm Products, Inc., a corporation; Amalgamated Dairy Workers Local, Industrial Union No. 819, a voluntary unincorporated Association; Josef Wagner, doing business as Wagner Dairy Products; Lake View Cooperative of Watertown, Wisconsin, an Agricultural Cooperative Corporation of the State of Wisconsin,

Plaintiffs,

vs.

Milk Wagon Drivers Union, Local 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, a voluntary association; Robert G. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, Alvin F. Richards, and Joseph L. Patterson,

Defendants.

In Equity No. 16073.

Be It Remembered, that the above-entitled action was commenced by the filing of the following Bill of Complaint with Exhibit attached in the above-entitled cause, in the office of the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, on this the twenty-first day of May, 1938.

3 DISTRICT COURT OF THE UNITED STATES OF AMERICA.

* * (Caption 16073) * *

BILL OF COMPLAINT.

To the Honorable, the Judges of Said District Court, in Chancery Sitting:

The Plaintiffs, Lake Valley Farm Products, Inc., a corporation, Amalgamated Dairy Workers, Local Industrial Union, No. 819, a voluntary unincorporated association; Josef Wagner doing business as Wagner Dairy Products; Lake View Cooperative of Watertown, Wisconsin, an agri-

cultural cooperative corporation of the State of Wis-
4 consin, file this their Bill of Complaint, against Milk Wagon Drivers Union, Local 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, a voluntary association, with its principal office and place of business in the City of Chicago, County of Cook and State of Illinois; Robert G. Fitchie, both individually and in his representative and official capacity as hereinafter more fully described, a citizen and resident of the State of Illinois, residing in the City of Chicago and County of Cook thereof; James Kennedy, both individually and in his representative and official capacity as hereinafter more fully described, a citizen and resident of the State of Illinois, residing in the City of Chicago, and County of Cook thereof; Steve Sumner, both individually and in his representative and official capacity as hereinafter more fully described, a citizen and resident of the State of Illinois, residing in the City of Chicago and County of Cook thereof; Fred C. Dahms, both individually and in his representative and official capacity as hereinafter more fully described, a citizen and resident of the State of Illinois, residing in the City of Chicago, and County of Cook thereof; F. Ray Bryant, both individually and in his representative and official capacity as hereinafter more fully described, a citizen and resident of the State of Illinois, residing in the City of Chicago and County of Cook thereof; Alvin F. Richards, both individually and in his representative and official capacity as hereinafter more fully described, a citizen and resident of the State of Illinois, residing in the City of
5 Chicago, and County of Cook thereof; Joseph L. Patterson, both individually and in his representative and official capacity as hereinafter more fully described, a citizen and resident of the State of Illinois, residing in the City of Chicago, and County of Cook thereof; and certain unknown persons whose names, citizenship and place of residence is unknown, and allege the following:

First: The Plaintiff, Lake Valley Farm Products, Inc., is a corporation duly organized under and existing by virtue of the Laws of the State of Illinois, with its principal office and place of business in the City of Chicago, County of Cook and State of Illinois, within the said Division and District aforesaid.

Second: The Plaintiff, Amalgamated Dairy Workers Local Industrial Union No. 819, is a voluntary unincorporated association at common law of a large number of persons (hereinafter for convenience referred to as Plaintiff Union) all of whom are citizens and residents of the Divi-

sion and District aforesaid; that said Plaintiff Union mantains its executive office in the City of Chicago, County of Cook and State of Illinois, and within the Division and District aforesaid.

Third: The Plaintiff, Josef Wagner, is a citizen and resident of the State of Illinois, residing in the Town of Cicero, in the County of Cook thereof, within the said Division and District aforesaid.

6 Fourth: The Plaintiff, Lake View Cooperative, is an agricultural cooperative non-stock corporation, organized under and existing by virtue of the Laws of the State of Wisconsin, relating to the organization of agricultural cooperative corporations, with its principal office and place of business in the Town of Watertown, County of Jefferson and State of Wisconsin.

Fifth: The Defendant, Milk Wagon Drivers Union of Chicago, Local 753, (hereinafter for convenience referred to as Defendant Union) is a voluntary unincorporated association at common law, the members of which are citizens and residents of the Division and District aforesaid; said Defendant Union maintains its office and conducts its affairs in the City of Chicago, County of Cook and State of Illinois, within the said Division and District aforesaid.

Sixth: The Defendant, Robert G. Fitchie, is a citizen and resident of the City of Chicago, County of Cook and State of Illinois, and is the duly elected, qualified and acting President of and for the Defendant Union.

Seventh: The Defendant, James Kennedy, is a citizen and resident of the City of Chicago, County of Cook and State of Illinois and is duly elected, qualified and acting Vice-President and one of the Business Agents of and for the Defendant Union.

7 Eighth: The Defendant, Steve Sumner, is a citizen and resident of the City of Chicago, County of Cook and State of Illinois and is the duly elected, qualified and acting Secretary of and for the Defendant Union.

Ninth: The Defendant, F. Ray Bryant, is a citizen and resident of the City of Chicago, County of Cook and State of Illinois, and is one of the duly elected, qualified and acting Business Agents of and for the Defendant Union.

Tenth: The Defendant, Alvin C. Richards, is a citizen and resident of the City of Chicago, County of Cook and State of Illinois, and is one of the duly appointed, qualified and acting Business Agents of and for the Defendant Union.

Eleventh: The Defendant, Joseph L. Patterson, is a citizen and resident of the City of Chicago, County of Cook

and State of Illinois, and is the duly elected, qualified and acting Treasurer of and for the Defendant Union.

Twelfth: The Defendant, Fred C. Dahms, is a citizen and resident of the City of Chicago, County of Cook and State of Illinois, and is the duly elected, qualified and acting Recording Secretary of and for the Defendant Union.

8 Thirteenth: This Complaint is a suit of a civil nature in Equity, which arises out of the Laws of the United States enacted to give protection to trade and commerce and against restraints and monopolies, being "An Act To Protect Trade and Commerce Against Unlawful Restraints and Monopolies" approved July 2, 1890, 15 U. S. C. A. Sections 1 to 7, and commonly known as the Sherman Anti-Trust Act, and "An Act to Supplement Existing Laws Against Unlawful Restraints and Monopolies and For other Purposes" approved October 15, 1914, 15 U. S. C. A. Sections 12 to 27, commonly known as the Clayton Act; and prays that the Court in granting complete relief to the Plaintiffs herein adjudicate and determine the rights of the Plaintiffs under and by virtue of a certain Statute of the State of Illinois entitled "An Act Approved June 28, 1919, Amending the Conspiracy Act of March 27, 1874, (Chapter 38, Section 139, Smith-Hurd Illinois Revised Statutes 1937), and further adjudicate and determine the rights of the Plaintiffs under Section 19 of the United States Criminal Code (18 U. S. C. A. Section 51), which provides, in part, as follows:

"That if two or more persons conspire to injure, oppress, threaten or intimidate any person in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or the Laws of the United States * * * shall be fined, etc."

and to fully adjudicate and protect the rights of the Plaintiffs under other Laws of the United States applicable to the facts herein.

9 Fourteenth: Jurisdiction of the Court is further invoked by virtue of the diverse citizenship of the parties Plaintiff and Defendant herein, under the provisions of Section 41 (1) of the Judicial Code of the United States, (28 U. S. C. A.)

Fifteenth: The Plaintiff, Lake Valley Farm Products, Inc., is now and for more than three years last past continuously prior to the filing of this Bill of Complaint, has been engaged in the business of processing and distributing milk and dairy products in the City of Chicago and its environs; that its pasteurizing plant is located at 5330 South

Western Avenue in the City of Chicago, Illinois, and that said plant contains machinery, fixtures, equipment and other apparatus necessary to the handling, pasteurizing, bottling and all other necessary processes in connection with such business; that the said corporation has a large investment in its said dairy equipment and in the delivery equipment necessary to the distribution thereof; that approximately ninety persons are employed in such plant in connection with the processing and handling of said milk and dairy products and in the distribution of its products to the various outlets therefor; that in the conduct of its said business, this Plaintiff receives more than one million pounds of fluid milk monthly; that during the period that said Plaintiff has been engaged in said business, it has established a valuable good will, in that large numbers of the milk consuming
10 public of the City of Chicago and its environs desire to purchase and do purchase their milk product requirements of and from persons selling the products to this Plaintiff as hereinafter more specifically described; that said Plaintiff has at all times enjoyed satisfactory relationships with the purchasing public and has established a reputation for the satisfactory quality of its products and has, because of said reputation, created said good will, which good will and the ability to continue to serve said public is of great value and worth to this Plaintiff; that said property and said established business of this Plaintiff is the value of approximately Two Hundred Thousand Dollars ($200,000.00).

Sixteenth: The Plaintiff, Josef Wagner, is now and for more than twenty-five years last past continuously prior to the filing of this Bill of Complaint, has been engaged in the business of processing and distributing milk and dairy products in the City of Chicago and its environs; that its pasteurizing plant is located at 5407 West 24th Street, in the Town of Cicero, Illinois, and that said plant contains machinery, fixtures, equipment and other apparatus necessary to the handling, pasteurizing, bottling and all other necessary processes in connection with said business; that the Plaintiff, Josef Wagner, has a large investment in said dairy equipment and in the delivery equipment necessary to the distribution thereof; that approximately twenty-
11 four persons are employed in such plant in connection with the processing and handling of said milk and dairy products and in the distribution of such products to the various outlets therefor; that in the conduct of said business, this Plaintiff receives more than one-half million pounds of fluid milk monthly; that du[illegible]g the period that

said Plaintiff has been engaged in said business, he has established a valuable good will, in that large numbers of the milk consuming public of the City of Chicago and environs desire to purchase and do purchase their milk product requirements of and from persons selling the products of this Planitiff as hereinafter more specifically described; that this Plaintiff has at all times enjoyed satisfactory relationships with the purchasing public and has established a reputation for the satisfactory quality of his products and has, because of said reputation, created said good will, which good will and the ability to continue to serve said public is of great value and worth to this Plaintiff; that said property and said established business of this Plaintiff is the value of approximately Fifty Thousand Dollars ($50.000.00).

Seventeenth: The Plaintiff, Amalgamated Dairy Workers Local Industrial Union No. 819, is an unincorporated association at common law of natural persons chartered by the Committee for Industrial Organization, its parent union, for the purpose of organization and collective representation of workers engaged in the dairy industry;
12 that said Plaintiff Union maintains its executive office and transacts its business and affairs at and in the City of Chicago, in the County of Cook and State of Illinois; that in furtherance of its purposes, said Plaintiff Union has organized divers dairy workers in the City of Chicago, among said workers being the workers employed by, and processing, handling and distributing the products of, the Plaintiffs, Lake Valley Farm Products, Inc., and said Wagner Dairy Products.

Eighteenth: That for the purpose of avoiding industrial strife, burdening or obstructing interstate commerce, and for the purpose of granting to workers full freedom of association and organization and designation of representatives of their own choosing to negotiate the terms and conditions of employment, the Congress of the United States has enacted a certain law commonly known as the "Wagner Labor Relations Act", Title 29 U. S. C. A. Sections 151 to 166, wherein the public policy of the United States is declared to be as follows:

"Section 1. * * * It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and desig-

nation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

13 Nineteenth: The said Plaintiff Union has been designated by its said members as their sole representative for the purpose of collective bargaining with their respective employers, including the Plaintiff Dairies herein, and that pursuant to such designation as sole representative for collective bargaining, the Plaintiff Union has exacted from the Plaintiff Dairies agreements in writing under the terms of which agreements said dairies agree that they will recognize the Plaintiff Union as the sole representative of their workers for the purpose of collective bargaining; that all matters concerning wages and terms and conditions of employment will be determined by mutual agreement between said Plaintiff Union and said Plaintiff Dairies, and that in the event of the inability to agree upon any such matters as may hereafter be in controversy, that such matters will be submitted to and decided by arbitration; that the interests of the members of Plaintiff Union in and to their respective jobs and the security and permanence thereof, and their right to the protection and assurance thereof by means of union organization and the designation of their representative for the purpose of collective bargaining, and the right of the Plaintiff Union to act as the selected and accepted exclusive bargaining agent of its said members is a valuable property right of great value to the said Plaintiff Union and to its respective members; that said right is such a right as is sought to be protected under the Constitution and Laws of the United

14 States.

Twentieth: That this suit, among other things, asks that the Court grant unto the Plaintiff Union and its members the full protection of the Laws of the United States to the end that the said right of organization and collective representation for the purpose of avoiding industrial strife may be carried out and given effect, and that the valuable rights of the Plaintiff Union and its members therein may not be so unlawfully threatened and endangered, and interstate commerce burdened and obstructed thereby, in the manner as hereinafter specifically set forth.

Twenty-first: That the Plaintiff, Lake Valley Farm Products, Inc., receives its daily requirements of fluid milk of and from the Plaintiff, Lake View Cooperative, which maintains a country receiving plant or station at the Town of Watertown in the State of Wisconsin; that said plant receives said fluid milk from farmer producers whose farms

are located adjacent to the said country plant, all of which farms are situated in, and which farmers are residents and citizens of the said State of Wisconsin; that said farmer producers deliver said milk to said country plant where the same is collected, and on the same day and shortly thereafter, placed in and transported by motor trucks over the public highways and in and as a part of the stream of interstate commerce from the said State of Wisconsin
15 into and in the State of Illinois, and to the dairy plant of the said Plaintiff, Lake Valley Farm Products, Inc., in the City of Chicago, County of Cook and State of Illinois, aforesaid.

Twenty-second: That the Plaintiff, Josef Wagner, receives the fluid milk supply daily necessary to the conduct of his business of and from the Richmond Milk Plant maintained and operated at the Town of Richmond in the County of Cook and State of Illinois; that said dairy plant is situated but a few miles from the boundary of the State of Illinois with the State of Wisconsin; that said Richmond Milk Plant receives said fluid milk from farmer producers, whose farms are located adjacent to said milk plant, many of which farms are situated in the State of Wisconsin; that said farmer producers deliver said milk on the day of its production to said Richmond Dairy Plant, including those farmer producers whose farms are situated in the State of Wisconsin, and who bring said milk from the State of Wisconsin at the point of its production to said Richmond Milk Plant; that said milk so received is collected and on the same day and shortly thereafter transported by motor truck along and upon the public highways of the State of Wisconsin, in the stream of interstate commerce to the dairy plant of the Plaintiff, Josef Wagner, in the Town of Cicero, and State of Illinois, aforesaid.

16 Twenty-third: That the Plaintiff, Lake View Cooperative receives the fluid milk that it sells to Plaintiff, Lake Valley Farm Products, Inc., from its constituent members, such members being the owners of dairy farms located adjacent to the country receiving plant or station of the Plaintiff, Lake View Cooperative, at Watertown, in the State of Wisconsin; that said farmer producers are residents and citizens of the State of Wisconsin; that the milk produced by said farmer producers is brought to said receiving station daily, on the day of its production and after the same is cooled and collected is on the same day and shortly thereafter, placed in and transported by motor trucks over the public highways and in and as a part of the stream of interstate commerce, from the said State of

Wisconsin and into and in the State of Illinois, to the dairy plant of the Plaintiff, Lake Valley Farm Products, Inc. in the City of Chicago, in the State of Illinois, aforesaid, and elsewhere; that the milk so collected at the country receiving station at Watertown, Wisconsin for shipment to the Plaintiff, Lake Valley Farm Products, Inc., is indistinguishable from milk received for and sold to other dairies, in that milk for all dairies is commonly collected and intermingled and the amounts needed are measured by quantity from the entire amount received.

17 Twenty-fourth: That said fluid milk so purchased by the Plaintiff Dairies herein, and so sold by the Plaintiff, Lake View Cooperative, is transported daily by said Dairies and said Cooperative into the State of Illinois, and that in the transportation of said fluid milk into and in the State of Illinois the same is intermingled inextricably with other milk in interstate commerce destined for the City of Chicago, Illinois, and becomes a part of the steady flow and stream of interstate commerce in milk for other dairies situated in and distributing milk and other dairy products in the said City of Chicago, and is inextricably intermingled and an integral part of the steady flow and stream of other articles of commerce and trade in interstate commerce destined for the City of Chicago, Illinois; that an amount in excess of 40% of all of the milk sold as whole milk in the City of Chicago and its environs, is produced at sources outside of the State of Illinois and is transported in interstate commerce into the State of Illinois, and an amount in excess of 75% of the cream sold in said Chicago and its environs is manufactured from milk produced outside of the State of Illinois; that milk and cream produced outside of the State of Illinois and sold in the said City of Chicago and its environs by divers other dairies there situated, is sold in direct competition with the milk and cream sold by the Plaintiff Dairies; that the conduct of the businesses of the Plaintiff Dairies and the transportation of the said fluid milk to said dairies constitutes a large and im-

18 portant continuous course of business conducted in the stream of interstate commerce among the several states of the United States of America, as the term is defined and employed in the Laws of the United States, and particularly as used and employed in the Laws hereinabove referred to in paragraph "Thirteenth" hereof.

Twenty-fifth: That the Plaintiff Dairies, in the conduct of their said businesses, daily purchased cream from persons dealing in the same, and that practically all of the milk used in the production of said cream is produced in states

other than the State of Illinois, and that said milk so used in producing said cream, and said cream, is transported in interstate commerce and the same is part of the flow of interstate commerce and a part of the trade and commerce conducted in the continuous flow of said interstate commerce.

Twenty-sixth: That the Plaintiff Dairies, in the conduct of their said businesses, receive the said fluid milk daily, as aforesaid, and immediately thereafter, pasteurize and bottle the same; that said pasteurizing and bottling requires a very short period of time, and the milk so received is distributed in the manner hereinafter set forth, on the same day as received and within a few hours thereof; that Plaintiff Dairies distribute a portion of said bottled milk and cream to various business establishments situated in the City of Chicago and its surroundings, such business establishments being in the nature of milk stores, grocery stores, delicatessens, food stores and other retail establishments where the same is sold at retail to the ultimate consumer thereof; that said bottled milk and cream is distributed from the said Plaintiff Dairy by motor trucks, being the property of said Plaintiff Dairy operated by drivers who are employed by said Plaintiff Dairy and who are members of the Plaintiff Union herein; that a portion of said bottled milk and cream of said Plaintiff Dairies is sold to various persons who own and operate automobile truck equipment, who pick up said bottled milk and cream at the pasteurizing plant of said Dairy, and thereafter distribute the same to various milk and food stores of the nature and kind as hereinabove referred to; that said persons so operating said delivery truck equipment are of a class commonly known and referred to as "vendors"; that said Plaintiff Dairy, in connection with said sales to such vendors, delivers no part of said milk to the ultimate consumer thereof but that its transactions in connection therewith terminates with the sale to said vendors; that in addition thereto, said Plaintiff Dairies sell a part of their said bottled milk and cream to persons, as hereinbefore designated as vendors, which vendors deliver and distribute said bottled milk and cream directly to the homes of household consumers thereof.

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20 Twenty-seventh: That milk distribution in the City of Chicago consists principally of two methods, the same being either delivered directly to the home of the ultimate consumer, or sold at various retail establishments in the nature of milk stores, grocery stores, delicatessens

and other food stores, at which stores the consumer calls and purchases said milk or cream, paying cash therefor, and carrying the same to his or her respective home; that in the City of Chicago, at the date of the filing of this Bill of Complaint, there are approximately twenty-six hundred (2600) of such stores selling milk upon a cash and carry basis; that approximately five hundred twenty (520) of said retail stores situated in the City of Chicago sell the bottled milk and cream of the Plaintiff Dairies herein, and that the remainder of such stores distribute milk and cream pasteurized and bottled by other dairies operating and conducting their businesses in a manner similar to that of the Plaintiff Dairies; that by virtue of the fact that many less stops per route are required to deliver a similar quantity of milk, the cost of distribution to the said Plaintiff Dairies or to the vendors distributing the milk of said Plaintiff Dairies to said milk stores, is very much less than the cost necessarily incurred in delivering milk directly to the home of the consumer, a practice has grown up and is now prevalent in the City of Chicago of selling said bottled milk and cream in said milk stores at prices less than that
21 charged for milk delivered directly to the home of the consumer; that the difference in the cost of delivery between the two types of distribution is approximately three cents for each quart of milk; that by means of distribution through such milk stores, it has been possible to furnish the milk consuming public with said products at a considerable saving, and due to the public necessity therefor and the inherent validity of the method of distribution, the demand for said milk has developed so that at the present time approximately 40% of all of the milk and cream sold in the City of Chicago is distributed by sale at such milk stores; that because of the fact that said milk has been and is being sold at a considerable saving, the Plaintiff Dairies and other dairies selling to said milk stores or depots have been termed and now are referred to as "cut rate dairies."

Twenty-eighth: That the great majority of said twenty-six hundred (2600) cash and carry milk stores situated and operating in the City of Chicago are in the nature of grocery stores, delicatessens, food stores and similar establishments which, in addition to milk and cream, sell complete lines of food products of a nature and kind usually sold by similar establishments; that said retail establishments are owned by various individuals, and that the Plaintiff Dairies do not own any retail milk stores and are not interested

in any way in the ownership of any of said stores; that
22 the aggregate investment of the owners of said retail establishments is estimated to be several millions of dollars; that in connection with the conduct of said independent retail food stores, it is necessary that various other products in the nature of bread, cheese, meat, sausage, canned goods, ice cream, bakery goods and other items and articles sold by said establishments be delivered to said stores by various persons; that said food stores are, in most cases, owned by an individual, who personally conducts the affairs thereof and who employs a very small number of employees; that because of the nature of the business conducted by said independent food stores, and the ownership thereof, and the same not being workers in the dairy industry, they are not amenable to organization by the Plaintiff Union, and by virtue of the fact that none of said persons so engaged are milk wagon drivers, none of said persons are amenable to organization by or membership in the Defendant Union, herein.

Twenty-ninth: That the vendors so distributing the products of the Plaintiff Dairies, as hereinbefore described, by virtue of the fact that they are independent contractors and as such operate their own business were, at no time, subject to organization or acceptable to membership in the Defendant Union.

23 Thirtieth: That the Defendant Union is a "craft" union, that is to say, a union which accepts for membership only those persons employed in a particular craft or performing a particular type of work; that as the name of the Defendant Union implies, it is a union for and accepts for memberships, only persons employed as milk wagon drivers; that the owners of the independent milk stores herein referred to and the vendors distributing the products of Plaintiff Dairies and other cut-rate dairies, are not milk wagon drivers, are not employees, do not receive a fixed salary, and are not acceptable to membership in Defendant Union.

Thirty-first: That the Plaintiff Union is an "industrial" union, that is to say, a union to which all members engaged in a given industry, regardless of the work performed, are acceptable for membership; that the plaintiff Union is a union for, and accepts for membership, all workers in the dairy industry, whether such persons are inside workers, milk wagon drivers, vendors or any other classification of worker.

Thirty-second: That the members of the Defendant Union are and have been in the employ of various dairy

establishments operating in the City of Chicago, in direct competition with the operations and business of the Plaintiff Dairies and other cut-rate dairies; that these dairies employing as milk wagon drivers, the members of De-
24 fendant Union, distribute bottled milk and cream directly to the homes of the ultimate consumer; that among said dairies are the following: Bowman Dairy Company, Borden-Wieland Division of the Borden Co., Sidney Wanzer & Sons, Capitol Dairy Co., Western-United Dairy Company, and various other dairies; that the said dairies herein in this Paragraph enumerated, employing members of the Defendant Union are very large dairies and have a combined capitalization in excess of one hundred million dollars; that all of said large dairies in this paragraph enumerated own and operate delivery equipment in the nature of motor vehicles and horse drawn wagons for the purpose of delivering bottled milk and cream in house to house delivery, directly to the home of householders in and about the City of Chicago; that all of said dairies in this paragraph enumerated and many other dairies, more than one hundred in number, operating pasteurizing plants in the City of Chicago, employing members of the Defendant Union, purchase large quantities of fluid milk produced in and transported from States other than the State of Illinois, to-wit: approximately 40% of their requirements, and purchase large quantities of cream produced from milk originating in States other than the State of Illinois. to-wit: approximately 75% thereof; that said fluid milk is pro-
duced in the States of Wisconsin, Indiana, Michigan
25 and other States, and after the production thereof is transported by railroad, automobile trucks, and other methods of transportation along and upon the highways of the said various States and into and in the State of Illinois, all occurring in and a part of the steady flow and stream of interstate commerce; that the transportation of said milk and the pasteurizing and distribution thereof all occur within and are a part of the continuous and uninterrupted stream of interstate commerce; that the said interstate commerce in said milk industry constitutes a very large proportion of all of the commerce coming into the City of Chicago, by reason of the fact that milk is of a perishable nature and must be transported daily, and by reason of the fact that it is the largest agricultural product determined by volume and value; that any act or acts in any way burdening, affecting, limiting or restricting the sale and distribution of milk in the City of Chicago, threat-

ens, burdens and directly affects limits and restricts interstate commerce.

Thirty-third: That the dairies in the City of Chicago employing members of the Defendant Union distribute a majority of all of the milk distributed in the City of Chicago, and constitute a monopoly of the distribution of milk in said City directly affecting interstate commerce; that the said Defendant Union, despite the economic justification, public demand therefor, and the inherent validity and efficiency of the cut-rate method of distribution and its attendant large savings to the public, by virtue of the
26 unlawful conspiracy, confederacy, combination and agreement as hereinafter more particularly described, have sought to maintain an artificial price of milk in the City of Chicago, and have sought to prevent the Plaintiff Dairies and other independent cut-rate dairies from distributing milk at a reasonable price; that said Defendants conspiring among themselves and with divers other persons have attempted to regulate and control the retail price of milk in the City of Chicago, and the manner and method of distribution thereof, which things the Plaintiffs say are not within the lawful perview of Defendant Union's activities, but on the contrary are wholly wrongful and illegal; that the actions of Defendant Union in its attempt to prevent the distribution of cut-rate milk and its attempt to determine and control the retail price of milk has been evidenced and sought to be effected by and has resulted in a continuing state of terror, lawlessness, violence, intimidation and other unlawful and illegal acts in the City of Chicago; that the independent stores selling cut-rate milk for the period of the past several years have been bombed, destroyed by fire, the plate glass windows thereof have been smashed, stench bombs have been thrown into the same, customers have been intimidated and threatened, owners and clerks working in said stores have been threatened and assaulted, ingress to said stores by customers has been prevented, delivery of food stuffs and other necessary commodities into said stores has been prevented; patrons of such stores have been insulted, threatened and otherwise abused,
27 and other unlawful and criminal acts have been committed; that said acts of violence still continue, and that by virtue thereof a present state of terror exists in the City of Chicago, the purpose and effect of which is to threaten and intimidate the public and create in them a fear which will prevent them from patronizing the said independent milk stores distributing milk of the Plaintiff Dairies and other cut-rate dairies, to the end that they

may be eliminated, their competition stifled, a monopoly created, and interstate commerce restricted and limited; all of which acts the Plaintiffs say are unlawful and contrary to the Laws of the United States and the Constitution thereof and obstructing and burdening interstate commerce.

Thirty-fourth: That in addition thereto, the Defendant Union, in order to carry out and give effect to the said unlawful conspiracy, confederacy, combination and agreement, has caused certain of its members to patrol back and forth in front of the independent milk stores selling milk bottled by Plaintiff Dairies, carrying a placard or banner having inscribed thereon, the legend:

"This Milk Store is Unfair to Milk Wagon Drivers Union, Local 753, I. B. T. affiliated with the A. F. of L."

That said picketing in many instances (and as more specifically hereinafter set forth) has commenced after threats by members and agents of the Defendant Union, that the same would commence unless milk were purchased from
28 certain named dairies selling at higher prices and after various other threats, intimidations and acts of violence; that said pickets in addition to patrolling in front of said stores have and do annoy, argue with, jeer, direct foul language at, intimidate and threaten customers and potential customers of said independent milk stores and do interfere and prevent the orderly conduct of the business of said stores; that said pickets do argue with, threaten and prevent persons making deliveries to said stores and do block and prevent entrance into said stores.

Thirty-fifth: That the said picketing of said stores by said Defendant Union is not peaceful picketing, pursuant to a legitimate labor dispute, for the reason that the businesses of said independent milk stores as hereinabove stated are not amenable to organization and their employees are not acceptable to membership in the Defendant Union; that said stores are not involved in any labor dispute of any kind or nature; that said picketing is and constitutes a secondary boycott in unlawful restraint of trade as defined by the Laws of the United States appertaining thereto, for the reason that the said picketing is not for the purpose of giving publicity to a labor dispute, as no labor dispute exists; because the statement upon said placard or banner is untrue and fraudulent for the reason that said store is not an employer of labor capable of membership in either Plaintiff or Defendant Union; for the reason that the statement contained upon said placard or banner does not pre-

sent the whole story, but seeks by fraudulent statement
29 and concealment of actual facts to unlawfully prevent
persons from trading with said store; because said picketing has been accompanied by threats of force, intimidation and violence; because the end to be achieved to-wit: a monopoly in restraint of interstate trade and commerce is illegal, and therefore all acts in pursuance thereof are illegal; that by virtue of the number of milk stores in the City of Chicago, and the number of pickets committing the aforesaid acts at or near the same, the same constitutes a general threat to all of the members of the public of the City of Chicago, and creates a special public interest therein; that it is impossible for the public authorities charged with the duty to protect the same, to provide sufficient policemen and other agents of the State to patrol all of the streets of the City of Chicago, and to prevent the unlawful and violent acts hereinbefore and hereinafter set out.

Thirty-sixth: That in addition thereto and under the pretext of giving publicity to a labor dispute, the Defendant Union has caused to be distributed wide-spread among the people of Chicago a certain folder or document, photostatic copy of which is hereto attached and identified as Exhibit "A"; that said pamphlet lists the names of the Plaintiff Dairies, together with the names of certain other independent cut-rate dairies designating the same as "Non-Union Dairies as of January 25, 1938"; that the statements therein contained and the method of presentation
30 are so arranged as to work a fraud upon the members
of the public reading the same, and to present a fraudulent and untrue picture of the cut-rate milk situation; that the picture of various milk depots appearing upon said circular are pictures of milk stands selling bulk milk, and that all of said depots so pictured are situated outside of the City of Chicago; that the Health Department of the City of Chicago does not permit the sale of bulk milk and cream within its territorial limits; that by listing the names of the Plaintiff Dairies upon said circular together with photographs of said bulk milk States is an insinuation that the Plaintiff Dairies distribute their milk in the City of Chicago in this manner; that Plaintiff Dairies do not distribute their milk through bulk milk depots; that said circular contains various other fraudulent and untruthful statements concerning the manner in which cut-rate dairies operate, with particular reference as to sanitation, wages and hours of labor of employees, and that all of said statements are wholly untrue and known to be untrue to the

Defendant Union; that said circular is libelous per se; that by virtue of the foregoing, the same is an unlawful black list, and creates a secondary monopoly; that despite the fact that the Defendant Union has been informed and know that the Plaintiff Dairies have now become unionized that they still continue to publish and distribute said circular, and have mailed the same through the United States mail.

31 Thirty-seventh: That for the reason that milk is daily transported into the City of Chicago from States other than the State of Illinois, and is at once distributed for sale in the City of Chicago together with other milk regardless of the place of the origin of said other milk, as part of a daily and continuous operation, as hereinabove described, that the acts of the Defendants as hereinbefore and hereinafter described creating said secondary boycott, occur in the stream of and directly burden and obstruct the flow of trade and commerce between the several States as defined by the said Laws of the United States.

Thirty-eighth: That the Plaintiff Dairies and their respective workers, said workers being members of the Plaintiff Union, at the time hereof and in the past have worked together in harmony and understanding without strife or controversy, and that no strife or controversy exists as of the date hereof; that no dispute concerning the wages of said workers, hours of employment or any of the terms or conditions of employment exist between the Plaintiff Dairies and their said workers; that the Plaintiff Dairies in recognition of the right of their workers to designate representatives for the purpose of collective bargaining have entered into written agreements with said Plaintiff Union wherein and whereby the said Plaintiff Union is

32 recognized as the sole representative of said workers for the purpose of collective bargaining, as hereinbefore stated; that the said contract remains in full force and effect and is a binding obligation upon the Plaintiff Dairies and the Plaintiff Union; that the acts and conspiracy of the Defendants herein and their agents is calculated to induce the breach of said contract by the said Plaintiff Dairies.

Thirty-ninth: That by reason of the foregoing, that no labor dispute exists within the terms of the Norris-La Guardia Act and that the provisions and requirements thereof are not herein involved.

Fortieth: That the commission of said acts by the said Defendants, so constituting a secondary boycott as above, violates the right of the Plaintiff Dairies as guaranteed

to them by the Constitution of the United States and the Laws thereof, to conduct their respective business in a lawful and proper manner free from unlawful molestation and interference, and denies to their respective workers and employees their right to be secure in their respective jobs, and of their right to work free from illegal molestation and interference, and denies to the said Plaintiff Union its right to collectively represent and protect their respective members, and denies to said Independent Milk Stores their right to remain in business and to conduct their respective business in a lawful and proper manner without unlawful molestation.

33 Forty-first: That for the past five years the Plaintiff Dairies and other independent cut-rate dairies have been attempting to sell milk at a reasonable price through the medium of such cash and carry milk stores, and that throughout the said period the said Defendants, in their desire to prevent the same, have, by their concerted effort, conspiracy, confederation and agreement as hereinafter described, conducted a continuous course of unlawful acts and have and do continue to commit the unlawful acts of violence, threat, force, intimidation and boycott as hereinbefore and hereinafter particularly described.

Forty-second: That again, and on or about the 15th day of April, A. D. 1938, the said Defendants, James Kennedy, Robert G. Fitchie, Fred C. Dahms, F. Ray Bryant, Alvin C. Richards, Joseph L. Patterson and Steve Sumner, acting individually and also in their several respective capacities as officers, agents and servants of and for the said Defendant Union, did enter into an unlawful conspiracy, combination, confederacy and agreement with each other and with other persons to this Plaintiff unknown, the purpose of said conspiracy, combination, confederacy and agreement being to restrain trade and commerce among the several States contrary to the provisions of the Laws of the United States in regard thereto, in so far as the said commerce relates to the large and continuous flow and stream of interstate commerce created by and made up

34 of the importation of fluid milk and cream into the State of Illinois, of which said large and continuous flow and stream of interstate commerce, the milk and cream used by the Plaintiff Dairies and all other dairies operating in the City of Chicago in direct competition therewith, is an integral part and is inextricably intermingled and fused therewith, and in the course of which the conduct of the business of Plaintiff Dairies is maintained; and to secure a monopoly of trade and commerce in said fluid

milk and cream so transported in interstate commerce and to secure a monopoly of the business of distributing milk in the City of Chicago, which occurs in and as a part of the continuous flow and stream of interstate commerce; and to unlawfully fix and determine the retail price of milk in the City of Chicago, and to maintain an artificial price therefor, and to prevent the Plaintiff Dairies and other independent cut-rate dairies from selling cash and carry milk at a reasonable price, all of which occurs in and as a part of the continuous flow and stream of interstate commerce.

Forty-third: That said conspiracy, confederation, combination and agreement so ventured into by said Defendants hereinabove specifically enumerated, has been joined in from time to time by various other persons whose
35 names are unknown to the Plaintiff and the exact time of their joinder and entry into said conspiracy, confederacy, combination and agreement is unknown to this Plaintiff, but which facts are well known to all of the said Defendants.

Forty-fourth: That the said milk stores selling the products of said Plaintiff Dairies display conspicuously in their windows a large cardboard sign of the approximate size of fifteen inches in height and eleven inches in width, whereon the following printing appears:

"Grade A Milk and Cream, in this store is processed and delivered by Union Workers who are members of the Amalgamated Dairy Workers, L. I. Union No. 819";

that the printing on said sign is of a large size, so that the same can be read at a great distance and that the words "Union Workers" and "Amalgamated Dairy Workers" are printed in type more than one inch in height; that any person or persons walking in front of said stores can see and clearly read said sign advising them that the products sold by said store are processed and delivered by union workers affiliated with the Plaintiff Union; that the said picketing, boycotting and other unlawful acts of the Defendant are all being performed and directed against the Plaintiff Dairies herein with knowledge of the fact that
36 said stores are selling milk and cream processed and delivered by union workers affiliated with the Plaintiff Union, but that the said Defendants continue in said unlawful acts of picketing, boycotting and otherwise despite of said fact and in defiance thereof.

Forty-fifth: That one of the means employed by the Defendants for the purpose of effecting the said conspiracy is to cause the storekeepers now distributing the milk and

cream of Plaintiff Dairies, to discontinue purchasing from the Plaintiff Dairies or from vendors distributing the same, by unlawful picketing at and about the stores operated by said persons, and by the unlawful display of force, intimidation, threats of force, acts of violence, opprobrious epithets and other unlawful acts directed towards said storekeepers and directed at persons or customers desiring to purchase from said storekeepers, and by the distribution of false and fraudulent statements concerning the said Plaintiff Dairies, and by unlawfully preventing deliveries of other commodities and articles which are necessary to be made to said stores, and which are a necessary part of the stock of merchandise purchased and sold by said stores, from bakers, meat and sausage distributors, icemen and other persons who are and have for the time last past been delivering the said and other commodities to said stores.

37 Forty-Sixth: That the Defendants as a further means of effecting said conspiracy have sought to foment industrial strife between the Plaintiff Dairies and the persons working in the said dairies, by said unlawful picketing and the other said unlawful acts of force and violence, to the end that the rights of said workers and the said Plaintiff Union to collective bargaining shall be lost and destroyed, industrial strife created, and interstate commerce burdened and obstructed thereby, all contrary to the laws of the United States, and the public policy thereof as announced by the Wagner Labor Relations Act and elsewhere.

Forty-Seventh: That the Defendants as a further means of carrying out and effecting said conspiracy seek to eliminate the Plaintiff Dairies and all other independent cut-rate dairies from the distribution of milk in Chicago and its vicinity, by acts of force and violence directed against the Plaintiff Dairies, to the end that thereafter they can completely control and monopolize the distribution of milk in the City of Chicago and vicinity, by virtue of the fact that the Defendant Union represents the milk wagon drivers of all but the independent cut-rate dairies in Chicago, the Defendant Union will thereby completely control and monopolize the entire distribution of milk in the City of Chicago, all in restraint and monopoly of interstate trade and commerce.

38 Forty-Eighth: That the Defendants as a further means of effecting said conspiracy seek to control the retail price of milk in the City of Chicago, and prevent the competition of the sale of cash and carry milk at a lower price with its attendant saving and benefit to the public at

large, denying to the public the benefit and advantage of purchasing milk at reasonable prices and thereby to substantially burden, effect, limit and restrict the amount of milk transported in interstate commerce into the City of Chicago, by the unlawful acts of force and violence herein set forth, and that said acts do constitute a direct and immediate burden, restriction and limitation upon interstate commerce.

Forty-Ninth: That the Defendants as a further means of effecting said conspiracy seek to control and limit the amount of milk received by the Plaintiff and other cut-rate dairies and thereby limit and restrict the sale thereof in the City of Chicago by the unlawful acts of force and violence as herein set forth, all of which acts constitute a direct burden, restriction and limitation upon interstate commerce.

Fiftieth: That the said conspiracy has been, and at the date hereof, is being conducted with full force and effect and that many storekeepers have thereby been caused to discontinue purchasing milk from Plaintiff Dairies, by means of said conspirators unlawfully causing pickets
39 to patrol before the places of business of said storekeepers and by the other acts of unlawful force, threats of force, intimidation, violence, vandalism, and otherwise as herein more specifically set forth, conducted towards the owners and employees of said store, and against persons patronizing or desiring to patronize said stores; that the acts committed pursuant to said conspiracy have caused many of said stores to discontinue purchasing products of the Plaintiff Dairies by reason of the fact that said unlawful acts have prevented the delivery of other commodities, wares and merchandise, such as bread, meat, groceries, ice cream and other articles necessary to the conduct of the business of said stores; that by virtue of said stores so discontinuing to purchase the products of Plaintiff Dairies, that the competition with dairies employing members of Defendant Union, and who distribute by house to house delivery, has been materially diminished and that the same has created an ulawful monopoly and has directly restricted and limited the flow of milk in interstate commerce contrary to the laws of the United States; that thereby the Plaintiff Dairies, because of their inability to regain the patronage of said stores by virtue of the continuance of said threats and acts of force and intimidation, have and do now suffer irreparable damage.

40 Fifty-First: That the members of the public of the City of Chicago, by virtue of the pickets stationed before said independent milk stores, and by virtue of said

members of the public being accosted, insulted and offended, and by virtue of the many acts of force and violence against their person and property, have become afraid to patronize said milk stores and have caused to patronize the same in large quantities; that said members of the public, despite their desire to effect savings by the purchase of said cut-rate milk, have been compelled to purchase milk at higher prices from dairies employing workers who are members of the Defendant Union, despite their wishes to continue to purchase milk from stores selling the products of Plaintiff Dairies; that by virtue of the foregoing and other matters herein contained, the public interest is herein involved and the interest of the public in purchasing milk at reasonable prices is being defeated and prevented and that the said public interest merits the consideration and protection of this Court; that by virtue of the foregoing, a monopoly in restraint of trade has been created, which unlawful monopoly directly restricts and limits the flow of milk in interstate commerce contrary to the Laws of the United States; that because of the inability of the Plaintiff Dairies to regain the patronage of said members of the public, said Plaintiffs suffer irreparable damage.

41 Fifth-Second: That the said Defendants, in pursuance of said unlawful conspiracy, confederacy, combination and agreement, aforesaid, and in order to give effect to the purpose thereof and for the purpose of accomplishing and effecting the same have at the various times and places as in this paragraph hereinafter specifically enumerated, committed the following unlawful acts, among other things:

42 a. That, on, to-wit: May 6, 1938, the Defendant James Kennedy, visited the store of Albina Puszkiewicz, conducted at 8140 Exchange Avenue, Chicago, Illinois, and selling the products of the Plaintiff Lake Valley Farm Products, Inc., and threatened that unless the said store owner dis-continued the sale of said milk, that the Defendant Union would cause said store to be picketed; that on May 11, 1938, and thereafter the said store was and has been picketed by two persons patroling in front of said store carrying a legend stating "this milk store is unfair to milk wagon drivers union Local 753, I. B. T. Affiliated with the A. F. of L."; that said pickets have spoken with and prevented patronage of said store by creating fear in patrons and potential patrons thereof:

b. That on May 6, 1938, two representatives of the defendant Union whose names are unknown, called on one Chester M. Webster, who conducts a grocery store at 1480

Foster Avenue, Chicago, Illinois, and sells milk of the Lake Valley Farm Products, Inc., and stated that unless said store owner dis-continued purchasing milk from Plaintiff Dairy that said store would be picketed.

c. That on, to-wit: May 7, 1938, two representatives of the Defendant Union, whose names are unknown entered the store of one Joseph Spry, located at 1803 W. 58th Street, which store sells the product of the Plaintiff Lake Valley Farm Products, Inc., and threatened the owner thereof by telling him that unless the Union Card distributed by Plaintiff Union, and as hereinbefore referred to and described, was removed from the window of said store, that said window would be broken.

d. That, on, to-wit: May 10, 1938, the plate glass window at the store conducted by F. Fischer at 4008 Bell Avenue, Chicago, Illinois, which store sells milk of Lake Valley Farm Products, Inc., was broken by a cement rock being thrown through the same by a person whose identity is unknown.

e. That on, to-wit: May 6, 1938, two representatives of the Defendant Union, whose names are unknown, entered the store of one, Margaret Balika, conducted at 545 W. 103rd Street, Chicago, Illinois, and selling products of the plaintiff Lake Valley Farm Products, Inc., and threat-
43 ened that the plate glass window of said store would be broken unless the said Union card of the Plaintiff Union as hereinbefore referred to and described, was removed from said window.

f. That on, to-wit: May 9, 1938, at or about the hour of 3:00 A. M. the plate glass window of the store conducted by W. H. Smith, at 3810 Lake Park Avenue, Chicago, Illinois, and selling the products of the Plaintiff Lake Valley Farm Products, Inc., was smashed by persons whose identity is unknown.

g. That on, to-wit: April 12, 1938, pickets were stationed in front of the store conducted by Marie Laychak, at 936 E. 93rd Street, Chicago, Illinois, selling the products of the Plaintiff Lake Valley Farm Products, Inc., and that said store owner was visited by a representative of the Defendant Union, whose name is unknown, and was threatened that if she did not cease selling the products of said Plaintiff Dairy, that her store would be bombed, that said picketing continued until April 22, 1938, on which date the store owner was compelled to and did cease selling products of the said Plaintiff Dairy.

h. That on, to-wit: May 3, 1938, a representative of the Defendant Union visited the store operated by Mae

Sitko, at 4345 Fullerton Avenue, Chicago, Illinois, selling the products of the Plaintiff, Wagner Dairy Products, who demanded that said store owner remove all of said plaintiff's milk products and replace the same with products from dairies employing members of the defendant Union; that upon the refusal of said store owner, the said representative stated that said store would be picketed and on the same day two pickets appeared and have since been picketing said store, that said pickets harrass and disturb the patrons and potential patrons of said store and that the business of said store has fallen off materially.

i. That one Michael J. Shannon, operates a grocery store at 3146 Irving Park Blvd., Chicago, Illinois; that said person commenced said business in 1935, at 2627 N. Clark Street, Chicago, Illinois, selling the products of the
44 Plaintiff Lake Valley Farm Products, Inc., that said store was picketed for eight months and that said store owner was compelled to abandon said location and thereafter opened a store at 5051 N. Clark Street, Chicago, Illinois; that the windows of said stores were broken and the said store bombed three times, compelling the abandonment of said location;

j. That on, to-wit: May 5, 1938, an agent of the Defendant Union, whose name is unkonwn, entered the store of one Carl Wutzen, located at 3426 S. Halsted Street, which store sells the products of one of the cut rate dairies and stated that unless said store owner discontinued purchasing milk from cut rate dairies, that the store would be picketed by the defendant union.

k. That on, to-wit: May 6, 1938, a representative of the Defendant Union whose name is unknown entered the store of G. V. Dickson, conducted at 4309 Lake Park Avenue, Chicago, Illinois, and selling milk of Lake Valley Farm Products, Inc., and stated that unless said store owner discontinued to purchase milk from said plaintiff dairy and purchase from a dairy employing members of the defendant union, that said store would be picketed.

l. That on, to-wit: May 13, 1938, the plate glass window of the milk store conducted by J. T. Bazik, at 4411 Kimball Avenue, Chicago, Illinois, which store sells the products of Lake Valley Farm Products, Inc., was broken by a missile thrown by a person unknown to the Plaintiffs; that said business was commenced on May 18, 1937, at which time the said store owner sold the products of a large dairy which dairy employs members of defendant Union, and on August 15, 1937, commenced handling the products of the Plaintiff Lake Valley Farm Products, Inc.; that with-

in a few days after commencing to handle the products of the said plaintiff dairy, in August 1937, the window of said store was broken by a missile thrown by a person unknown to the Plaintiffs.

That on May 6, 1938, a member of the Defendant Union in the employ of one of the large dairies hereinbefore mentioned, entered the store located at 163½ W. North Avenue, Chicago, Illinois, and demanded of the owner that he discontinue selling the products of the Plaintiff Wagner Dairy Products; that said store owner refused and
45 thereafter a representative of the Defendant Union, whose name is unknown, called upon said store owner and stated that if he did not cease selling said milk and purchase milk from the Company employing the man first visiting said store, said store would be picketed; that said store owner refused and that the next morning two pickets appeared, which pickets refused to allow deliveries of necessary articles into said store; that the representative of said dairy then returned and removed the entire stock of Wagner Dairy Products, including the milk cases and milk bottles which are the sole property of said plaintiff, and paid said storekeeper $15.00 therefore; that said storekeeper states that he still desires to buy milk from the plaintiff Wagner Dairy Products, and that his customers prefer to purchase the same, but that he is afraid to continue to purchase the same.

m. That one Olga Hansen, formerly operated a milk store at 4345 W. Fullerton Avenue, Chicago, Illinois; that on, to-wit: February 1, 1938, at which time said store was selling products of the Plaintiff Wagner Dairy Products; that a representative of the Defendant Union, whose same is unknown demanded that said store owner discontinue said sales and purchase milk from a dairy employing members of the defendant Union; that said store owner refused to comply with said demands and that the windows of said store were broken on fourteen occasions; that the insurance company applied to for such coverage stated that if the said storekeeper would sell milk from dairies employing members of the defendant Union, that the windows would be safe and that they would write insurance thereon. That by virtue of the foregoing and other matters the said party was required to and did abandon said store.

n. That on, to-wit: May 4, 1938, two men who stated they were representatives of the Defendant Union, and whose names are unknown, entered the store conducted by Karrie Kmier, at 4316 S. Wood Street, Chicago, Illinois, selling the products of the Plaintiff Lake Valley Farm

Products, Inc., and said: "You are selling cut rate at 8½c. If you do not stop at once to sell milk at this price, we will picket this store." That on the next morning these two representatives of the Defendant Union commenced to and did thereafter picket said store with a placard bearing the legend as hereinbefore described.

o. That one Max Weiss, conducting a milk store at
46 2122 W. Division Street, Chicago, Illinois, and selling the milk products of one of the cut rate dairies has had the window of said store broken on six occasions by unknown persons, has been attacked and beaten and had the tires of his automobile truck slashed in the month of June of 1937, by reason of his refusal to discontinue the said sale of cut rate milk.

p. That on, to-wit: May 4, 1938, a representative of the Defendant Union whose name is unknown, visited the store conducted by Lillian Pappas at 625 E. 75th Street, Chicago, Illinois, selling the milk products of Lake Valley Farm Products, Inc., and stated that he was sent from the Defendant Union and that unless said store owner discontinued such sales and sold milk from a dairy employing members of the defendant Union, that said store would be picketed; that the windows of said store were broken by unknown persons within the past two months.

q. That on or about to-wit: April 15, 1938, the Defendant James Kennedy visited the store conducted by Gertrude Dimian, at 5026 Cottage Grove Avenue, Chicago, Illinois, selling the products of Lake Valley Farm Products, Inc., and threatened to picket the said store if the said sales were not discontinued.

r. That on, to-wit: May 13, 1938, two representatives of the Defendant Union, whose names are unknown, visited the store conducted by J. J. Fox, at 2201 Foster Avenue, Chicago, Illinois, selling the products of Lake Valley Farm Products, Inc., and threatened that unless said sales were discontinued that all deliveries of bread, groceries, ice and other products would be prevented from coming into said store; that on November 15, 1936, the window of said store was broken by an "unknown person" who threw a milk case through the same.

s. That representatives and agents of the defendant Union whose names are unknown, within the two weeks last past prior to the filing of the bill of Complaint herein, visited stores located at 5058 Kenmore Avenue; 3810 Lake Park Avenue; 6703 N. Clark Street; 5201 S. Halsted Street; 402 E. 63rd Street; 3112 Montrose Avenue; 5516 S. Morgan Street; 6865 N. Glenwood Avenue; 3606 Wilton Avenue;

5367 S. Rockwell Street; 2304½ N. Narragansett Ave-
47 nue; 805 Oakwood Blvd.; 5855 S. Kedzie Avenue; 4249
W. Roosevelt Road; and have visited many other stores in the City of Chicago, and State of Illinois, and have threatened that if said stores did not discontinue the sale of products of the plaintiff dairies, and other independent cut rate dairies, that said stores would be picketed and other unlawful and violent acts would be committed.

t. That stores selling milk of the plaintiff dairies, and other independent cut rate dairies located at 507 W. 69th Street, 2815 N. Troy Street; 625 E. 79th Street; 408 E. 79th Street; 353 E. 75th Street; 4018 Broadway; 1254 E. 81st Street; 49 E. 105th Street; 1242 N. Damen Avenue; 2717 W. 63rd Street; 4833 N. Kedzie Avenue, 2450 W. 59th Street; 4411 Kimball Avenue; 4111 Broadway; in the City of Chicago, Illinois, and countless other stores selling said products have had the windows of said stores broken or said stores bombed or set on fire, by persons whose names are unknown, all within the period referred to by the Bill of Complaint herein.

u. That on May 4, 1938, a representative of the defendant union entered the store conducted by one Edwin St. Pierre, at 6250 Maplewood Avenue, Chicago, Illinois, selling the products of Lake Valley Farm Products, Inc., which representative demanded that the said store owner remove from his window the said Union card of the Plaintiff Union as heretofore described herein; that on May 11, 1938, another representative of the Defendant Union whose name is unknown visited the store conducted by M. C. Monoyer at 5635 Irving Park Blvd., Chicago, Illinois, and made a similar request.

v. That the said pasteurizing plant of the plaintiff Lake Valley Farm Products, Inc., hereinbefore mentioned was in the month of June, 1935, and in the month of September, 1935, bombed by unknown persons; that on both occasions serious damage and destruction was ocasioned.

w. That, the pasteurizing plant of the Plaintiff Josef Wagner, was bombed on three occasions within the time referred to in the Bill of Complaint herein; that on all of said occasions serious damage and destruction of property
was occasioned and that on one occasion the life of an
48 innocent third person was endangered; said third person suffering physical injury therefrom; that in addition other acts of force and violence have been directed at and against the said Plaintiff; all of which acts the said Plaintiff is ready to prove in Court.

x. That in addition, to the foregoing specific acts, count-

less other acts of violence consisting of the breaking of windows, the overturning of delivery trucks, the assaulting and beating of store owners and persons selling and delivering milk of independent cut rate dairies, bombing and the like have been committed against the distributors of cut rate milk in the City of Chicago, Illinois, during the time referred to in the Bill of Complaint herein.

y. That on, to-wit: May 14, 1938, one O'Connor, a business agent and representative of the Defendant Union visited the store of Joseph Andrews, located at 1604 W. 82nd Street, Chicago, Illinois, selling milk and cream of Lake Valley Farm Products, Inc., and threatened that unless said storekeeper discontinued such purchases, that said store would be picketed; that on May 18, 1938, said picketing was commenced and now continues in the manner as hereinabove in other cases described.

49 Fifty-third: That by virtue of the foregoing many of the stores heretofore patronizing Plaintiff Dairies have been unlawfully prevented, and at present do desist from doing so; that the members of the public of the City of Chicago heretofore patronizing said stores selling Plaintiffs' products, have been prevented and now desist from doing so; that Plaintiff Dairies have lost the patronage of said stores and said members of the public and have suffered and do suffer irreparable damage and injury thereby; that the Plaintiff, Lake View Cooperative accordingly had its said outlet for milk so threatened and limited; that the Plaintiff Union and its members have been and are being denied the right to representation for collective bargaining and the livelihood and employment of the members of Plaintiff Union and Plaintiff Dairies has and is being threatened and endangered; that the Defendants continue in their threats of force and intimidation and in the performance of said unlawful acts, and that if said acts are carried to completion and not restrained by this Honorable Court, that the Plaintiffs will suffer irreparable damage, loss and injury thereby.

Fifty-fourth: That as a result of said unlawful conspiracy and conduct of the Defendants and each of them, the interstate trade and commerce of these Plaintiffs, and of trade and commerce generally in milk and cream coming into the State of Illinois, has been and is being greatly

50 demolished, decreased and restrained, and if said conspiracy, combination, and confederacy is permitted to continue without the intervention of this Court, that it will be impossible for the Plaintiff Dairies and Plaintiff Cooperative to continue in the exercise of their respective business

in the flow and stream of interstate commerce as hereinbefore described, and that said businesses will be ruined and destroyed, and that the Plaintiffs will suffer great and irreparable loss and damage, and that the said Defendants will secure for themselves and for the said dairies employing persons who are members of the said Defendant Union, a complete monopoly of the said interstate commerce, and control all of the milk in said interstate commerce coming into the City of Chicago; that the same constitutes a monopoly contrary to the laws of the United States, and that the said monopoly will be to the great detriment and disadvantage of the general public of who will then be denied their rightful privilege of purchasing milk at reasonable prices brought about by lawful competition in the distribution thereof.

Fifty-fifth: That the foregoing acts of unlawful picketing, violence, force, intimidation, and threats of force and the like, are of themselves criminal acts committed by the Defendants under the guise and pretense of a legitimate labor dispute; that as set forth herein, no labor dispute exists, but on the contrary the said acts are the means
51 whereby the said defendants attempt to give effect and carry out the purposes of their said unlawful conspiracy, confederacy, combination and agreement; that because of the vast number of persons who have joined with the Defendants in said conspiracy, confederacy and agreement and have joined with them in the performance of said wrongful acts, that the same burdens, affects and directly limits and restricts the flow of interstate commerce of the Plaintiff Dairies and Plaintiff Cooperative, and of interstate commerce in general, into the City of Chicago, and that if the Defendants and said other persons conspiring and acting with them are permitted to continue in the performance of said unlawful acts, that the businesses of Plaintiff Dairies and Plaintiff Cooperative will be completely destroyed and ruined, and that Plaintiffs will suffer irreparable damage and injury thereby; that Plaintiffs have no adequate remedy at law to protect themselves from the Defendants and the consequent irreparable damage, the loss and injury that will follow from the continuance of the said wrongful acts of the Defendants.

Fifty-Sixth: That the Plaintiffs and each of them state that they have no adequate or sufficient remedy at law; that because of the foregoing combination, conspiracy and confederacy and the aforementioned acts committed pursuant thereto, that the Plaintiff Dairies and Plaintiff Co-

operative suffered great loss, damage and injury to
52 its good will and to their trade and business; that the said acts of Defendant consisting of said unlawful picketing, violence, threats, intimidation and other acts are continuing, and are now being perpetrated and performed to the constant loss and damage of the business of the Plaintiff Dairies, the Plaintiff Milk Cooperative and the Plaintiff Union, and that unless restrained and enjoined by this Honorable Court, that the said unlawful acts of the Defendants will continue without interruption; that by reason of the facts that the acts of the Defendants constitute a great number of isolated acts of vandalism, destruction, force, violence, threats and intimidation, and because it is impossible for the Plaintiffs to determine the exact number of people who have been threatened and unlawfully acted against, and because it is impossible for the Plaintiffs to determine the exact extent to which their good will, trade and business has been affected, impaired and damaged, and because it is impossible for the Plaintiffs to determine the names and exact number of persons who have ceased patronizing the stores selling Plaintiff Dairies' products by virtue of the unlawful acts of the Defendants, and because it is impossible to determine the exact extent to which the said unlawful acts of the Defendants have diminished interstate commerce, that it is impossible to maintain suits at common law, for the reason that the amount of damage to be claimed in any such
53 suit is of such an indefinite nature that the same would not meet the strict requirement of a common law proceedings as to the exact extent and amount of said damage; that even if the exact amount of damage in all of said instances were ascertainable, a great multiplicity of independent suits would be required to adjudicate and determine each and every of the issues involved in each of said proceedings; that the Plaintiffs state that all of said individual acts of the Defendants are not isolated acts, but are all of a continuing nature and are all part of the means chosen and employed by the Defendants to carry out the purposes and give effect to the said unlawful conspiracy, confederation and agreement of said Defendants; that the continuance of said conspiracy and the acts committed pursuant thereto will ruin and destroy the Plaintiff Dairies and Plaintiff Cooperative's businesses and good will and their trade in milk in interstate commerce, and will directly affect the general trade in interstate commerce; that the businesses of said Plaintiff Dairies and Plaintiff Cooperative, will in the natural

course of things prosper and grow and the membership of Plaintiff Union increase and its affairs prosper if unmolested by the Defendants, and that the exact value to which said good will and said businesses will advance said Union increase is incapable of ascertainment according to the standards of procedure and rules of evidence required in a Court of Law in that regard.

54 Fifty-Seventh: That the Defendants have stated that it is their purpose and intent to continue and persist in said unlawful picketing and other unlawful acts of the nature and kind as hereinbefore specifically set forth, and that the said Defendants have and do threaten the Plaintiffs and storekeepers selling the products of Plaintiff Dairies that they will continue in the performance of said acts interferring, hindering, limiting, burdening and obstructing the interstate commerce of the Plaintiff Dairies and Plaintiff Cooperative as hereinbefore alleged, all pursuant to illegal conspiracy, confederation and monopoly in restraint of trade and commerce among the several states as defined by the Laws of the United States pertaining thereto.

Fifty-Eighth: That by virtue of the fact that no labor dispute exists, as defined by the Laws of the United States, that the said picketing by the said Defendant Union is not peaceful picketing and cannot be disguised as the means of giving publicity to a labor dispute, but is rather an unlawful boycott denying to the Plaintiffs and to the said stores through whom the products of said Plaintiff Dairies are distributed, the full protection of their rights under the constitution of the United States and the Laws passed pursuant thereto; that, therefore, Plaintiffs ask that

55 in determining upon the issuance of temporary and final writs of injunction herein that the Court consider into the question as to the relative loss and damage the parties hereto will suffer or gain by the issuance or denial of said preliminary or final writs of injunction, and in that behalf state that if the said temporary writ and final writ of injunction is denied to these Plaintiffs that they will suffer great and immediate loss and damage, the exact amount thereof is incapable of ascertainment; that daily the Plaintiff Dairies are losing said store outlets, and that daily large number of persons are ceasing to patronize the said stores, that on the contrary, the Defendant Union will suffer no damage or injury whatsoever by the granting of said preliminary or final writs of injunction, for the reason that no property right of the Defendant Union is involved herein; that the Plaintiffs will suffer great, imme-

diate and irreparable damage unless a temporary injunction is issued by the Court, and that the Defendant Union will suffer no immediate damage or loss by the issuance thereof.

Inasmuch, Therefore, as these Plaintiffs, and each of them, are without remedy, except in a Court of Equity, and to the end that the Defendants, Milk Wagon Drivers Union, Local 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, a voluntary association, Robert G. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, Alvin C. Richards, and Joseph L. Patterson, individually and
56 in their respective capacities as officers and agents of said Defendant Union, and all of the members of said Union, and all persons who may be now or hereafter may conspire, confederate, combine, agree or arrange with them, the names and identity of which persons are to these Plaintiffs unknown, all of which persons are made parties Defendant to this Bill of Complaint, may be required to make full and complete answer hereto, but not under oath, the answer under oath being expressly waived.

Wherefore, the Plaintiffs pray:

A. That this Court issue a temporary restraining order or preliminary injunction, to be in full force and effect until a final hearing and decree be had and entered herein, and until the further order of the Court, as follows:

1. Restraining and enjoining the Defendants in this proceeding and each and all of them and all of their officers, attorneys, servants, agents, associates, members and employees, aiders and abetters, and all persons acting in conjunction or sympathy with them, from:

a. In any manner unlawfully interferring with, hindering or obstructing the Plaintiffs, their officers, employees or duly authorized agents or representatives, in the free, uninterrupted and unhindered control and direction of their respective affairs.

57 b. In any manner interferring with, hindering, preventing or otherwise discouraging or diverting or attempting to interfere with, hinder, prevent, discourage or divert persons desirous of purchasing milk, cream or other articles from persons, firms or corporations handling, distributing, selling or vending milk and cream of the Lake Valley Farm Products, Inc., or if Josef Wagner trading as Wagner Dairy Products, by the use or display of force

and numbers, signs, placards or banners, by the making of threats, intimidations, jeers, opprobrious epithets, molestation, entreaties or by means of the practice commonly known as picketing.

c. In any manner engaging, directing or procuring others to engage in the practice commonly known as picketing, that is to say, patrolling or causing to be patrolled members of said Milk Wagon Drivers Union, Local 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, or any other persons, in the vicinity of the Dairy Plants of the Plaintiff Dairies, or in the vicinity of any of the stores operated by persons, firms or corporations handling, distributing, or selling milk and cream of the Plaintiff Dairies or either of them, with banners, placards or other devices.

58 d. In any manner unlawfully interferring with hindering or obstructing the Plaintiff Dairies and Plaintiff Cooperative, their officers, employees or duly authorized agents or representatives in the free, uninterrupted and unhindered distribution of their respective products.

B. That, thereafter, such other Writs and Orders shall issue and be entered herein as to the Court shall seem fit and proper and necessary for the protection of the Plaintiffs, and that the provisions of any temporary restraining order or preliminary injunction be hereafter made permanent.

C. That the Writ of Injunction, as prayed for herein, be issued without bond from the Plaintiffs, by reason of the good cause for so doing, as set forth in this Bill of Complaint.

D. That Writs of Subpoena directed to the said Defendants and each of them issue, commanding them on a day certain to appear and answer this Bill of Complaint, but not under oath, answer under oath being hereby expressly waived, and to abide by and perform such order and decree as the Court may make in the premises.

E. That a temporary restraining order may issue herein restraining the Defendants and each of them, in accordance with the prayer hereof, pending a hearing on said application for a preliminary injunction; that said temporary restraining order may at once be effective and binding on each of the Defendants named.

59 That the plaintiffs may have such other, further and different relief, in the premises, as to this Court shall seem just and proper.

Lake Valley Farm Products, Inc., a corporation.
Signed By: Siegfried Weiss,
its president,
Plaintiff.

Amalgamated Dairy Workers Local Industrial Union No. 819, a voluntary unincorporated Association.
Signed By: Nicholas P. Kost, Jr.,
its president,
Plaintiff.
Signed By: Josef Wagner,
Plaintiff.

Lake View Cooperative of Watertown, Wisconsin, an Agricultural Cooperative Corporation of the State of Wisconsin.
Signed By: Thos. J. Dascey, *Sec.*,
Plaintiff.

Arthur R. Seelig,
Attorney for Plaintiffs.

60 United States of America. } ss.

State of Illinois, County of Cook. } ss.

Siegfried Weiss, being first duly sworn, upon his oath, deposes and says that he is the President of the Lake Valley Farm Products, Inc., a Corporation, and is the same person who has subscribed the foregoing and attached Bill of Complaint in its behalf, that he has read the Bill of Complaint and knows the contents thereof and he says that the matters and things therein stated are true in substance and in fact, except, as to such things that are therein stated to be upon information and belief, and as to such matters he says, that he believes the same to be true.

(Signed) Siegfried Weiss.

Subscribed and sworn to before me, a Notary Public, authorized to administer oaths this 19 day of May, A. D. 1938.

(Signed) William S. Glassman,
Notary Public.

(Seal)

61 United States of America, } ss.

State of Illinois, County of Cook. } ss.

Nickolas P. Kost, Jr., being first duly sworn, upon his oath, deposes and says that he is the President of Amalgamated Dairy Workers Local, Industrial Union No. 819, a voluntary unincorporated association, and is the same person who has subscribed the foregoing and attached Bill of Complaint in behalf of such Union, that he has read the Bill of Complaint and knows the contents thereof and he says that the matters and things therein stated are true in substance and in fact, except, as to such things that are therein stated to be upon information and belief, and as to such matters he says, that he believes the same to be true.

(Signed) Nickolas P. Kost, Jr.

Subscribed and sworn to before me, a Notary Public, authorized to administer oaths this 19 day of May, A. D. 1938.

(Signed) William S. Glassman,
(Seal) *Notary Public.*

62 United States of America. } ss.

State of Illinois, County of Cook. } ss.

Joseph Wagner, being first duly sworn, upon his oath, deposes and says that he is one of the Plaintiffs in the foregoing and attached Bill of Complaint and that he subscribed to the same. That he has read said Bill of Complaint and he says that he knows the contents thereof and that the matters and things charged therein are true in substance and in fact, except as to such things that are therein stated to be upon information and belief, and as to such matters he says, that he believes the same to be true.

(Signed) Josef Wagner,
Josef Wagner.

Subscribed and sworn to before me, a Notary Public, authorized to administer oaths this 20 day of May, A. D. 1938.

(Signed) William S. Glassman,
(Seal) *Notary Public.*

63 United States of America. } ss.

State of Wisconsin, County of Jefferson. } ss.

Thomas J. Dascey, being first duly sworn upon his oath deposes and says that he is the Secretary of the Lake View Cooperative of Watertown, Wisconsin, a corporation, organized under the Agricultural Cooperation Act of the State of Wisconsin, one of the plaintiffs in the foregoing Bill of Complaint, and the duly authorized agent of said Plaintiff in this behalf; that he is the same person who has subscribed the foregoing Bill of Complaint on behalf of said Corporation; that he has read the said Bill of Complaint, knows the contents thereof and that the matters and things therein stated are true in substance and in fact, except as to such things that are therein stated to be upon information and belief and as to such things he says, that he believes the same to be true.

(Signed) Thos. J. Dascey,
Sec.

Subscribed And Sworn to before me a notary public in and for the State of Wisconsin and County of Jefferson this 17 day of May, A. D. 1938.

(Signed) Francis P. Beggar,
Justice of the Peace, Notary Public, Jefferson County, Wisc.

Exhibit A

CUT-RATE MILK IS POSSIBLE ONLY WHEN IT IS HANDLED, PROCESSED AND DELIVERED BY POORLY PAID NON-UNION WORKERS . . . .

An old barn converted into a milk depot. This photo shows one of the many bulk or dip milk stores dotting the fringe of Chicago.

Pop, peanuts and caramel apples are featured in this roadside milk store. Note the dilapidated storage shed in the rear and that the milk is advertised as "Wisconsin quality."

Another old shed on the Northwest Side converted into a roadside milk depot.

The photo below shows one of the cut-rate milk stores in Chicago where milk is cheaper because it is handled by poorly-paid non-union help.

Within the past year, the flood of cut-rate milk has been increasing to such proportions that it is not only causing a serious unemployment problem among the workers in the Milk Wagon Drivers' Union, Local 753, and the Dairy Employees' Union, Local 754, but, directly and indirectly, it is striking at the very roots of the labor union movement itself.

Cut-rate or low cost bulk milk is possible only because of the low pay and long hours being forced upon the drivers and workers in non-union dairies.

Today, union dairy employees and drivers are suffering because other union men purchase this cut-rate milk, and by so doing, bring tragic unemployment to these men and their families. It is estimated that at least 75% of all of the bulk and cut-rate milk sold in the Chicago area is being purchased and consumed by the families of trade union men who thus encourage this menace to the cause of trade unionism.

Buying cut-rate milk through groceries and delicatessens produces further unemployment and should be given serious consideration by every union man.

These outlets are served by great wholesale trucks where one driver delivers many thousands of quarts of milk. Such drivers, and there are many of them, are literally taking hundreds of jobs from the ranks of regular union drivers. Thus we see that the purchase of cut-rate milk in these stores greatly increases unemployment.

ROADSIDE MILK STANDS ARE A HEALTH MENACE

In a recent survey conducted by an independent research organization, many truly astounding facts were uncovered. At numerous stands, outside the city limits, dirty containers were offered, and these were unhesitatingly filled without so much as inspecting or rinsing the container. In many stands the milk was handled with dippers and funnels which were unwashed and exposed to all types of contamination. In other stands the containers were sealed with wads of crumpled paper.

In some milk stands, the paper milk containers were stored in open bins at the floor level, and so exposed to harmful germs. It is hard to believe that so fine a food product as milk could possibly be handled in such an unsanitary and disease-producing manner.

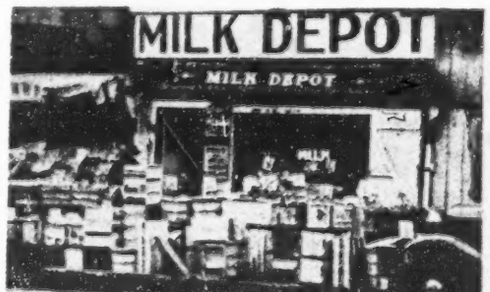
Many food buyers are attracted to these stands because they believe they are saving money, when in reality they may be jeopardizing the health of their own families. Usually bulk pasteurized milk sold at cheap prices does not come up to legal standards. The state law on pasteurized milk does not allow the sale of dip, loose, or bulk pasteurized milk, but requires it to be sold only in the container in which it is placed at pasteurization plant. Many truck loads of milk are brought into Illinois each day from Wisconsin, while many more come from farms whose milk has been refused by responsible milk distributors.

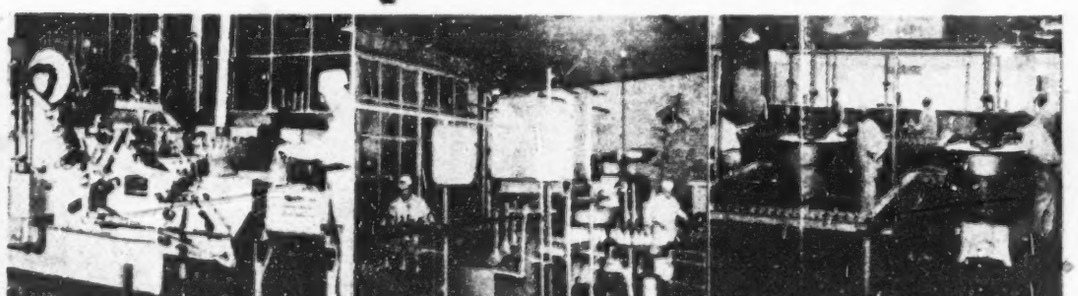
EVERY UNION WORKER CAN HELP

Every union worker should insist that the milk consumed in his family, and wherever possible in the families of his relatives and friends, should be milk that is processed and delivered by union men. If you are in doubt, ask your driver — ask to see his union card or button as illustrated below. It will take only a few seconds to determine whether or not your milk is being handled by union men. Just as the drivers and employees in the dairy unions are being called upon to support the interests of other union men in order that their problems may be solved, so, too — NOW — these drivers and dairy employees are seeking the wholehearted co-operation of every sincere and sympathetic union worker in the entire Chicago area.

Study the photographs shown and ask yourself — "Is the milk that we drink at home produced in dairy plants as fine and modern and sanitary as these?" — then do your part to support the cause of trade unionism and aid these other union men in their heroic struggle against this unfair non-union competition.

Typical interiors of modern dairies where the milk is processed by highly-skilled union men.





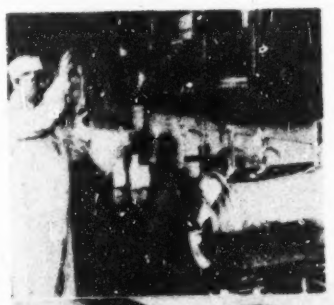
Every Union Driver wears this button. Look for it.

THE INCREASING FLOOD OF LOW-PRICED MILK NOW THREATENS ALL ORGANIZED LABOR

WHY UNION HANDLED AND DELIVERED MILK IS BETTER FOR YOU

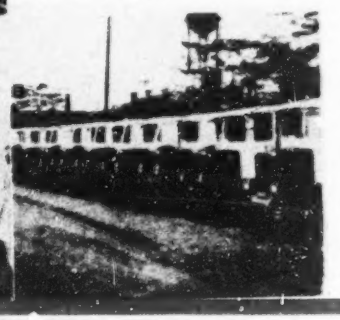
Union handled and delivered milk is actually safer to use and better for you. Very few people know that every union dairy employee must undergo frequent rigid health examinations. Not only do these sanitary standards apply to the employees themselves, but they apply with equal force to every step in the handling and processing of milk.

In addition to the added value of these precautionary steps, union dairies maintain splendid laboratories that constantly check the quality of the milk. This is an added and costly health measure, but is well worth it because of the added quality brought to the milk.



Yes, union processed and delivered milk is your guarantee of quality. Insist on this for your own sake and to help the cause of trade unionism as well.

See FEDERATION NEWS, labor's own newspaper, every week for latest developments on this fight.



HERE IS WHAT YOU CAN DO TO HELP—

Right now —check on the source of the milk used in your home. Ask the milk wagon driver to show you his Union button. Do this soon—before it slips your mind.

Do not patronize any stand, store or depot that sells dip or bulk milk, for no dairy supplying such stores has *any* Wage Agreement with either Local 753 or Local 754.

Protect your health! Beware of dip or bulk milk! Remember that such milk is sold in violation of the Illinois State Law which requires that all pasteurized milk be sold in the original container filled at the pasteurizing plant.

The following dairies do not have a wage scale with either union listed above and are among those supplying milk to cut-rate stores, stands and depots and so must be known as—

NON-UNION DAIRIES

(As of January 25, 1938)

Blue Ribbon Dairy
Edgewater Dairy Products Company
Farmers Co-operative Milk Company
Lake Valley Farm Products
Lake View Dairy
Meadowmoor Dairies, Inc.
Uptown Dairy Company
Wagner Dairy Company

If you are in doubt as to your dairy, call

UNION HEADQUARTERS

220 S. Ashland Ave. - Phone { MONroe 7344 / SEEley 7038

This folder prepared and printed for the Milk Wagon Drivers' Union, Local 753, and the Dairy Employees Union, Local 754, by The Bureau of Research, Inc., Chicago, Illinois.

ADDITIONAL COPIES *FREE* ON REQUEST

A GROWING MENACE TO UNION LABOR

67 And afterwards, to wit, on the 23rd day of May, 1938, being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Philip L. Sullivan, District Judge, appears the following entry, to wit: Entered May 23, 1938.

68 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—16073) * *

Monday, May 23, A. D. 1938.

Present: The Honorable Philip L. Sullivan, Judge of said Court.

It Is Ordered by the Court that the Plaintiffs motion for a Preliminary Injunction be and the same is hereby referred to Charles A. McDonald, Master.

Master to file his report thereon in five (5) days.

69 And on, to wit, the 27th day of May, 1938, came the Defendants by their attorneys and filed in the Clerk's office of said Court their certain Answer, in words and figures following, to wit: Filed May 27, 1938.

70 DISTRICT COURT OF THE UNITED STATES OF AMERICA.

* * (Caption—16073) * *

ANSWER.

To the Honorable, the Judges of Said District Court in Chancery Sitting:

Now comes the defendants, Milk Wagon Drivers' Union, Local 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, a voluntary association; Robert G. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, Alvin F. Richards and Joseph L. Patterson by David A. Riskind, their duly authorized agent and attorney, and for answer to the Bill of Complaint heretofore filed herein say:

For a first defense the defendants, jointly and severally answering, say:

First: The defendants, in answer to Paragraph First of the complaint heretofore filed, have no knowledge or information as to the allegations contained therein, and for

lack of such knowledge or information neither admit nor deny, but demand strict proof thereof.

Second: The defendants, in answer to paragraph Second of the complaint hereinbefore filed, have no knowledge or information as to the allegations contained therein, and for lack of such knowledge or information neither admit nor deny, but demand strict proof thereof.

71 Third: These defendants admit all of the allegations contained in paragraph Third of the complaint.

Fourth: These defendants have no knowledge or information as to the allegations contained in Paragraph Fourth of the complaint, and for lack of such knowledge or information neither admit nor deny, but demand strict proof thereof.

Fifth: These defendants admit all of the allegations contained in paragraph Fifth of the complaint.

Sixth: These defendants admit all of the allegations contained in paragraph Sixth of the complaint.

Seventh: These defendants admit all of the allegations contained in paragraphs, Seventh to Twelve, both inclusive, of the complaint.

Eighth: These defendants, in answer to paragraph Thirteenth, jointly and severally deny that this is a suit of a civil nature in Equity, which arises out of the Laws of the United States enacted to give protection to trade and commerce and against restraints and monopolies, being "An Act To Protect Trade and Commerce Against Unlawful Restraints and Monopolies" approved July 2, 1890, 15 U. S. C. A. Sections 1 to 7, and commonly known as the Sherman Anti-Trust Act, and "An Act to Supplement Existing Laws Against Unlawful Restraints and Monopolies and For other Purposes" approved October 15, 1914, 15 U. S. C. A. Sections 12 to 27, commonly known as the Clayton Act; and defendants further allege that the claim of the plaintiff do not arise out of said laws within the meaning of the Statutes of the United States of America giving jurisdiction to the various district courts of the United States. Defendants further state that the Statute of the State of Illinois entitled "An Act Approved June 28, 1919, Amending the Conspiracy Act of March 27, 1874, has no relevance or application to the facts alleged in the complaint. Defendants further state that Section 19 of the United States Criminal Code has no relevance or application to the facts stated in the complaint. Defendants further state that under each and all of the Statutes mentioned in Para-

72 graph thirteenth by the plaintiffs, there is no jurisdiction in the District Court of the United States, for

the Northern District of Illinois, Eastern Division, over the subject matter of the facts alleged in plaintiffs' complaint.

Ninth: Defendants, in answer to paragraph Fourteenth of the complaint, deny that there is a proper diversity of citizenship so as to give this court jurisdiction of said cause because the complaint is filed in the name of Lake Valley Farms Products, Inc., a corporation; Amalgamated Dairy Workers Local, Industrial Union No. 819, a voluntary unincorporated association; Josef Wagner, doing business as Wagner Dairy Products; Lake View Cooperative of Watertown, Wisconsin, an Agricultural Cooperative Corporation, of the State of Wisconsin, only one of whom is a resident of a foreign state; that in order to create a diversity of citizenship necessary to give this court jurisdiction of the above case, all of the four plaintiffs must be non-residents of the State of Illinois.

Tenth: These defendants have no knowledge or information as to the allegations contained in Paragraphs Fifteenth to Seventhteen, both inclusive, and for lack of such knowledge or information, neither admit nor deny the same, but demand strict proof thereof.

Eleventh: These defendants have no knowledge or information as to the allegations contained in paragraph Nineteenth of the complaint, and for lack of such knowledge or information neither admit nor deny the same, but demand strict proof thereof.

Twelfth: These defendants deny each and every allegation contained in Paragraph Twentieth of the complaint.

Thirteenth: These defendants have no knowledge or information as to the allegations contained in paragraphs Twenty-First to Twenty-Sixth, both inclusive, of the complaint, and for lack of such knowledge or information, neither admit nor deny the same, but demand proof thereof.

Fourteenth: These defendants, jointly and severally, answering paragraph Twenty-Seventh of the com-
73 plaint, admit that there are two methods of delivery as alleged in said paragraph Twenty-Seventh, but state that they have no knowledge as to the other facts contained in said paragraph Twenty-Seventh, and for lack of such information and knowledge, neither admit nor deny but demand strict proof thereof.

Fifteenth: These defendants, jointly and severally, in answer to paragraph Twenty-Ninth of the complaint, deny that the said vendors, as alleged in said paragraph, are not eligible for membership in the defendant Union, but state the fact to be that any vendor is eligible to membership

providing, of course, that he agrees to comply with the Constitution and By-Laws of the said defendant Union.

Sixteenth: These defendants, jointly and severally in answer to Paragraph Thirtieth of the Complaint, deny that the said vendors referred to in Paragraph Thirtieth of the complaint are not eligible as members of the defendant Union, but state the fact to be that any person engaged in the delivery of milk is eligible to membership in the said Union provided, however, they agree to conform with the Constitution and By-Laws of the said defendant Union.

Seventeenth: These defendants, jointly and severally in answer to paragraph Thirty-First of the complaint, state that they have no information or knowledge of the allegations contained therein, and for lack of such knowledge or information, neither admit nor deny the same, but demand strict proof thereof.

Eighteenth: These defendants, jointly and severally in answer to paragraph Thirty-Second of the complaint, admit that the defendant Union has collective bargaining contracts with the said dairies as mentioned in said paragraph and that the said dairies do employ members of the defendant Union. Defendants admit that the dairies mentioned in Paragraph Thirty-Second do employ members of the said defendant Union and that said dairies distribute milk to the various households; that these dairies engaging members of the defendant Union also deliver milk to various stores located within the City of Chicago and its
74 environs. The defendants, jointly and severally state that they have no knowledge of the combined capitalization of the dairies enumerated in paragraph Thirty-Second of this complaint, and for lack of such information neither admit nor deny the same, but demand strict proof thereof.

Defendants, jointly and severally, further deny that there is an uninterrupted stream and flow of interstate commerce by reason of the fact of the transportation of raw milk from other states into the State of Illinois and more particularly state that when the raw milk being transported from various other state is delivered to its final destination in the City of Chicago at the various dairies' plants located therein, the said raw products are taken from their original containers and put into tanks located within the said dairies; that thereafter the raw milk is processed and manufactured into saleable articles such as milk, cream, butter, cheese and other dairy products and sold to householders and stores located in the City of Chicago and its environs, all within the State of Illinois; that by so

doing, the newly manufactured articles become purely intrastate articles in character.

Nineteenth: These defendants, jointly and severally, deny all of the allegations contained in Paragraph Thirty-Third of the complaint.

Twentieth: These defendants, jointly and severally, deny all of the allegations contained in paragraph Thirty-Fourth of the complaint.

Twenty-First: These defendants, jointly and severally in answer to paragraph Thirty-Fifth of the complaint, deny that the picketing of said stores by the defendant Union is not peaceful picketing pursuant to a legitimate Labor dispute, and state the fact to be that the picketing is at all times peaceful for the purpose of advertising a legitimate labor dispute. Defendants, jointly and severally, deny all of the other allegations contained in the said paragraph.

Twenty-Second: These defendants, jointly and severally, deny all of the allegations contained in paragraphs Thirty-Sixth to Fiftieth, both inclusive, of the complaint.

75 Twenty-Third: These defendants, jointly and severally in answer to paragraph Fifty-First of the complaint, deny all of the allegations contained in said paragraph.

Twenty-Fourth: These defendants, jointly and severally in answer to paragraph Fifty-Second of the complaint, deny the allegations contained in sub-paragraph First of Paragraph Fifty-Second; these defendants deny any unlawful conspiracy, confederacy, combination or agreement as to the various acts described as alleged on pages 40 A to 40 G, inclusive. The defendants state that they have no knowledge or information as to the other allegations contained in said paragraph, and for lack of such information neither admit nor deny, but demand strict proof thereof.

Twenty-Fifth: These defendants, jointly and severally in answer to paragraphs Fifty-Third to Fifty-Eight, both inclusive, deny all the allegations contained in said paragraphs.

And for further defenses these defendants, jointly and severally, state that:

Twenty-Sixth: That the Milk Wagon Drivers' Union of Chicago, Local 753, International Brotherhod of Teamsters, Chauffeurs, Stablemen and Helpers of America, is a labor organization, that is, as unincorporated association at common law of natural persons who, on the 15th day of September, 1902, entered into articles of association commonly

known and denominated as "By-Laws of the Milk Wagon Drivers' Union", and such articles of association have been subsequently entered into by such members of the Union who elected to become associated therewith from time to time. The members of the said Union are engaged in the milk craft or industry and are commonly denominated as milk wagon drivers who are employed by dairies in the City of Chicago, Illinois, to sell and deliver pasteurized milk, pasteurized cream and other dairy products. The so-called milk wagon drivers, who are some times hereinafter referred to as "retail route men," make deliveries of pasteurized cream and milk to customers of their employers and their activity is confined exclusively to the County of Cook and such drivers work for a fixed and stated compensation, hereinafter more particularly described.

76 Twenty-Seventh: That the following named defendants are members of the defendant labor organization and occupy the following respective official capacities:

Robert G. Fitchie, is and has been president since 1909;

James Kennedy, is and has been vice-president since 1910;

Fred C. Dahms, is and has been recording secretary since 1928;

Steve C. Sumner is the secretary-treasurer, and has been affiliated with the defendant labor organization since its inception;

F. Ray Bryant, is and has been a trustee since 1917;

Alvin F. Richards, is and has been a trustee since 1907;

Joseph L. Patterson, is and has been a trustee since 1908.

Twenty-Eighth: That during the year 1902 the hours of those engaged in delivering milk commenced at about midnight and some time continued until seven o'clock the next evening. Such milk wagon drivers were paid a wage averaging from $9.00 a month to $12.00 a week, and were forced to sleep in haylofts where the horses were kept and to attend to the care of the horses. For the purpose of bettering the conditions existing in the milk craft and standardizing the hours of employment, procuring living wages for milk wagon drivers, and in general to secure the benefits resulting from trade unionism, the said defendant association was formed. From an organization of some three hundred individuals in 1902, it reached its peak in 1931 when some seven thousand members were associated therewith. The association is a division of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of

America, and by reason thereof an affiliate of the American Federation of Labor, the parent labor union. From its inception to the present time the defendant has entered into collective agreements commonly known as wage scale contracts with divers dairies in the County of Cook who are employers of milk wagon drivers. These wage scale contracts have been evolved since the inception of the defendant association, and the weekly wage scales required under the terms of said contracts have been variable and have
77 advanced in successive stages from $15.00 per week in 1905 until $35.00 per week was required in 1919 and a vacation of two weeks with full pay by the employer allowed. In 1921 the wage scale was advanced to $41.00, based upon a six-day week, and since December 1, 1936, the scale has been $45.00 per week.

Twenty-Ninth: That the plaintiffs, Lake Valley Farm Products, Inc., a corporation, and Josef Wagner, doing business as Wagner Dairy Products, in the course and conduct of their business, sell some of their milk and cream purchased, pasteurized, bottled and sold by them to distributors or persons commonly called vendors, that is persons, firm or corporations owning or operating trucks or conveyances who purchase their milk and other dairy products from the plaintiff dairies at their various plants in Chicago, Illinois.

Thirtieth: That the plaintiff dairies in the course and conduct of their business sell some part of their milk and cream and other dairy products directly to the consuming public by and through milk wagon drivers acting as employees on behalf of plaintiff dairies.

Thirty-First: That the plaintiff dairies, in the course and conduct of their business, sell some part of their milk, cream and other dairy products to the storekeepers and owners of stores with the intent that these storekeepers and owners of stores sell this milk and other dairy products to the consuming public.

Thirty-Second: That there are approximately one hundred and fifty dairies in the County of Cook engaged in the business of processing, pasteurizing and selling pasteurized milk, cream and other dairy products, and that a majority of the said dairies have entered into Articles of Agreement with the defendant Union to employ members of the defendant Union or those, who within thirty days from the date of employment, will become such for the purpose of delivering milk and cream to the vendees and consignees of the dairies in the County of Cook, and under the terms

of such Articles of Agreement, the parties thereto agree to the following, amongst other things:

78 That the hours for delivering milk are divided into two periods, one designated as the summer period commencing on the third Sunday is June, and the other designated as the winter period commencing five days before Labor Day. During the summer period drivers may deliver milk any time in the morning, but not past twelve o'clock noon, and all delivery wagons must be off the street by one o'clock P. M. During the winter period no wagon is permitted upon the street before seven o'clock A. M., nor any deliveries of milk to customers before eight o'clock A. M., excepting in a certain portion of the County of Cook where the trade may be supplied at any time during the morning, but not past twelve o'clock noon; that all employees coming under the provision of the Articles of Agreement for a period of fifty-two weeks service with any one firm shall be entitled to two full weeks vacation with pay, or if at the end of the fifty-two weeks such driver resigns or is discharged, in lieu of a vacation, the equivalent of two weeks pay shall be paid to him; that only one delivery of milk shall be made daily excepting the right to make occasional special deliveries to the wholesale trade; that on Sunday and all legal holidays excepting Lincoln's and Washington's birthdays, all wagons must be off the street by eleven o'clock A. M., and on Labor Day by ten o'clock A. M.; route foremen, route inspectors, route men, truck drivers, helpers, extra men and special delivery men shall become members of the Union if they spend fifty-one per cent of their time driving; that the wage scale required to be paid in the terms of the Articles of Agreement is as follows:

	Per Week	Per Day
Retail route men	$45.00	$7.50
Inexperienced men	44.00	7.33
Route foremen	52.00	8.67
Auto trucks (night work)	50.00	8.33
Auto trucks (day work)	49.00	8.17
Truck drivers (night work minimum)	46.00	7.67
Auto drivers (3 and 4 horse teams, nights)	48.00	8.00
Truck drivers (day work)	44.00	7.33
Special and extra men	44.00	7.33
Wholesale drivers (not receiving commission)	49.00	8.17
Wholesale drivers (receiving commission)	46.50	7.75
Assistant route foremen	50.00	8.33

79 Drivers shall be entitled to pay for six-day week, and in the event that it is impossible for such driver to get a day off each week, he shall be entitled to receive one day extra pay at the prevailing rate of wages. In addition to the wage scale, all drivers who are classified as retail route men shall receive a commission of seventy-five cents per hundred over a base of thirteen hundred thirty-three (1333) points per week; in cases of inexperienced milk wagon drivers, the first thirteen weeks the same schedule of wages shall be paid them less one dollar per week. A six-day week route shall be figured on a basis of eleven hundred forty-two (1142) points per week. A point of goods shall consist of one quart of milk, or two pints of milk, or four half pints of milk, or three one-third quarts of milk, or one quart of skim, one-half pint or two gills of cream, one quart of buttermilk. Eight hours shall constitute a day's work for night men and ten hours a day's work for day men. All truck drivers not specifically classified shall receive $45.00 er week for ten hours work per day.

Thirty-Third: That none of the vendors of their employees and none of the employees of the plaintiffs who engage in similar duties as those pursued by members of the defendant association, are members at present of the defendant labor union. That the following wages are paid to various employees or vendors of plaintiff dairies engaged in the pursuit of delivering milk, who would be classified under the provisions of the Union's Articles of Agreement respecting wage scales previously set forth as retail route men at differing rates as follows:

Truck drivers	$20.00 per week
Helper	15.00 per week
Retail route men	25.00 per week
Helper	1.50 per day
Retail route men	30.00 per week
Helper	1.50 per day
Helper	15.00 per week
Helper	20.00 per week
Truck driver	20.00 per week

Thirty-Third: That none of the retail route men of plaintiffs' dairies nor any of the employees of the vendors of plaintiffs' dairies engaged as helpers or in performing functions of retail route men, are paid any commission other than the fixed compensation above set forth. That
80 the average earning of the plaintiffs' vendors is approximately $15.00 per week for a seven day week.

That the plaintiff dairies hire and employ milk wagon drivers for wages lower then those paid by the majority of the dairies in the County of Cook, Illinois.

Thirty-Fourth: That since the inauguration of the so-called vendor system by plaintiff dairies, many retail route men who were members of the defendant Union and who were employed by various dairies in the County of Cook, have lost their jobs because of the plaintiff dairies so-called vendor system, and that such competition had a tendency to unfairly diminish the amount of trade enjoyed by the dairies employing Union help. Many of the so-called retail route men, upon being relieved of their duties or discharged from employment by dairies because of the unfair competition by the vendor system adopted by plaintiff dairies, have withdrawn from membership of the defendant Union and by virtue of economic pressure have become affiliated as employees with either vendors, or as vendors engaged in the purchase and sale of milk and cream pasteurized by the plaintiff dairies at wages much lower than those paid to members of the defendant Union doing similar work. Others, not being able to secure other employment have become the subjects of relief and are existing upon the charity and contributions of relief payments by the defendant Union. These two conflicting systems have resulted in the demoralization of the employees of the milk craft.

Thirty-Fifth: That the so-called vendors of plaintiff dairies and their respective employees and the employees of the plaintiff dairies herein do not adhere to the schedule of hours adopted and maintained by the defendant Union, nor do they adhere to any of the provisions contained in the so-called Articles of Agreement entered into between the various dairies and the defendant Union.

Thirty-Sixth: That since the inauguration of the vendor system the membership of the defendant Union has declined, and that at the present time its constituent membership is in the neighborhood of five thousand men, most of which decline is caused by the vendor system of milk delivery including employment of underpaid employees used by the plaintiff dairies.

81 Thirty-Seventh: That the defendant Union, in order to secure and fix conditions of employment and a scale of wages commensurate with that in force by virtue of the contractual relationship with the dairies employing members of the defendant labor organization and to secure to its members the rights created by the Articles of Agreement previously set forth has undertaken to unionize the

entire milk craft or milk industry in the County of Cook and among other things, to require those employing the so-called vendor system to engage the so-called vendors as retail route men, and to engage such vendors' employees as direct employees of the dairy and to pay said vendors and their employees a fixed and determined weekly salary and to adhere to the other conditions of employment as maintained by the defendant organization; and as one step in furtherance of this end, the said Union, its officials and members have, commencing with April 26, 1938, posted in front of various stores in the County of Cook engaged in the sale of milk originally pasteurized and bottled by the Plaintiff dairies, certain of its constituent members who patrolled back and forth in front of said stores carrying a placard or banner having inscribed therein the legend: "This milk store is unfair to Milk Wagon Drivers' Union, Local 753—I. B. T. Affiliated with the A. F. of L." that such patrolling and picketing have been carried on peacefully and without violence, and that in all instances only one person at a time patrolled back back and forth in front of stores and was relieved at certain hours by another person who carried on the said patrolling; that the instructions given to such persons patrolling or peacefully picketing by the officers of the defendant Union have been not to speak or carry on any conversation with any other person or persons in front of the said premises, nor to interfere with the orderly course of business of the said stores, except to patrol back and forth with the said placard as previously stated.

Thirty-Eighth: That there was no interference with the plaintiff dairies' business by the defendant Union, or any of its agents or members at their plants in processing the milk and dairy products they had purchased.

82 Thirty-Ninth: That there was no interference with the plaintiff dairies business in their sale to the vendors (plaintiffs' vendors) when they came to plaintiffs dairy plants to purchase the milk and other dairy products.

Fortieth: That the diminution of the requirements of the plaintiff dairies and any resultant loss from the attempt by the defendant Union to unionize the milk craft is not a direct restraint upon the said business of the plaintiff dairies, but only incidental, remote and indirect thereto.

Forty-First: That it was not and never has been the intent of the defendant Union or any of its constituent members or officers to restrain or monopolize, in whole or in part, any of the commerce carried on by the plaintiff dairies.

Forty-Second: That the defendant labor union has never in any way participated in the determination of the retail prices of pasteurized milk and other dairy products in the County of Cook and its environs, and that the various prices and price levels are determined by the economic laws of supply and demand without advice, consultation or suggestion of the defendant labor Union.

Forty-Third: That the defendants and each of them state that on September 13, 1902, appreciating that every improvement in the condition of working people is accomplished by the efforts of organized labor, and believing that the welfare of the individuals engaged in the milk industry could best be protected and advanced by their united action, a group of persons engaged in such craft did organize the Milk Wagon Drivers' Union of Chicago, Local 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, affiliated with the American Federation of Labor and thereafter continued to organize all the workmen engaged in the milk industry, to educate them in cooperative movements which tended to benefit the craft and to impress upon the constituent membership the necessity that in all their business dealings with the public and with each other, they should always honestly, soberly and intelligently conduct themselves; that the said Union nevertheless limited and circumscribed their jurisdic-
83 tion over only such persons as are engaged in the craft in Cook County, Illinois. By diligent application and as the benefits of trade unionism became more rapidly known and progressed, so also did the said Union grow until at the time of the filing of the Bill of Complaint in this cause, it had in excess of five thousand members; that in seeking the betterment of conditions in the craft, said Union at all times insisted that employers shall pay to employees a fair and living wage, to provide health facilities and refrain from imposing burdensome and unreasonable hours of labor. Said Union also provided for the payment of sick and death benefits to its members in order that it might make them secure in case of sickness, and their families free from want in case of death; that at the time of the filing of the Bill of Complaint in this cause practically all of the persons and firms engaged in delivering milk in the County of Cook, Illinois, had become unionized and have entered into agreements with the said Union in respect to wages paid to employees and the undertaking of other conditions consistent with the welfare of the said employees; that there are some institutions in the milk craft

who have employees engaged in delivering milk and who have desisted from unionizing such employees, amongst others, the Lake Valley Farm Products, Inc., a corporation, and Josef Wagner, doing business as Wagner Dairy Products. The said plaintiffs have failed to recognize and pay to such employees the schedule of wages promulgated by the defendant Union as a fair, reasonable living wage to employees, and have persisted in underpaying their said employees, and in other matters and in other manners defying the said defendant Union and its officials; that whenever a person was discharged from employment by a unionized dairy, or forfeited membership in the Union, he was immediately employed by the said plaintiffs, Lake Valley Farm Products, Inc., a corporation, and Josef Wagner, doing business as Wagner Dairy Products, for the purpose of securing the business theretofore enjoyed by such employee's former master, and to take away the benefits resulting from the good-will built up by the said master over a period of time.

84 That in order to unionize the employees employed by the said Lake Valley Farm Products, Inc., a corporation, and Wagner Dairy Products, the said defendant Union and its officials did, on divers times, cause certain members of the Union to walk in front of places patronizing the plaintiffs, Lake Valley Farm Products, Inc., a corporation, and Joseph Wagner, doing business as Wagner Dairy Products, carrying a placard bearing the following legend: "This milk store is unfair to Milk Wagon Drivers' Union of Chicago, Local 753." The unfairness of the said respective stores consisted in the acceptance, deliveries and purchase of milk from those members of the craft who were not unionized, and that each of the said persons carrying such placards were specifically warned at all times to desist from any unlawfulness, and merely to advertise and peacefully bring to the knowledge and attention of the public at large, and the friends of trade unionism, the unfairness of the said Lake Valley Farm Products, Inc., a corporation, and Josef Wagner, doing business as Wagner Dairy Products, and the said stores.

Forty-Fourth: That the defendant Union and its constituent members have at all times refrained from using any coercion that might be unlawful, or from creating a secondary boycott, but on the contrary have merely exercised their right to freedom of speech in calling the attention of the public to the true facts. Those engaged in other industries conveying merchandise in the County of Cook

to sell to customers of the Lake Valley Farm Products, Inc., a corporation, and Josef Wagner, doing business as Wagner Dairy Products, are in a large part trade unionists, being sympathetic with the purpose of trade unionism, and having been advised of the unfairness of the respective stores and the Lake Valley Farm Products, Inc., a corporation, and Josef Wagner, doing business as Wagner Dairy Products, their said drivers and vendors have voluntarily refused to deliver other commodities, but that such voluntary refusal on their part was not by reason of any intimidation, threat or coercion by the defendants, but in sympathy with the efforts of the defendant Union to organize the craft and unionize it, including the employees of the plaintiffs.

85 Forty-Fifth: That the issues raised by the Bill of Complaint have already been adjudicated and that the matter is res adjudicata or there is now an estoppelly verdict on the plaintiffs in that on or about September 19, 1934, a bill similar to plaintiffs' present complaint was filed by the Meadowmoor Dairies, Inc., a corporation, in the District Court of the United States, for the Northern District of Illinois, Eastern Division, a bill in equity against said defendants, Milk Wagon Drivers' Union of Chicago, Local 753, Robert G. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, Albert C. Richards, Joseph L. Patterson and David Riskind, and others, seeking to enjoin the same matter which is the subject of the Bill of Complaint herein; that the said cause was referred to the Honorable John P. Barnes, one of the Judges of the said Court, in said cause presiding, and subsequently was referred to the Honorable George E. Q. Johnson, one of the Masters in Chancery of said Court for the purpose of taking evidence therein and making findings of fact and of law therein. That the said Master in Chancery reported that the Bill of Complaint should be dismissed because the said Master in Chancery reported as follows:

A. That the cause involved persons engaged in the same craft or industry, namely the milk industry.

B. That the cause involved persons having a direct or indirect interest in the same industry, namely, the milk industry.

C. That the cause involved conflicting interests in a labor dispute of persons participating therein or interested therein.

D. That the dispute is a controversy concerning terms and conditions of employment.

E. That the dispute is a controversy concerning an association of persons, namely, The Milk Wagon Drivers' Union of Chicago, Local 753, in seeking to arrange terms or conditions of employment for those engaged in the same craft.

F. That the plaintiffs have failed to make every reasonable effort to settle such dispute either by negotiations or with the aid of any available governmental machinery of mediation or voluntary arbitration.

Forty-Sixth: That on or about January 21, 1935, upon the filing by the said Master in Chancery of his report recommending that the said Bill of Complaint be dismissed and that the subject matter thereof involved a labor
86 dispute, the Honorable John P. Barnes, ordered that the Bill be dismissed for want of jurisdiction on two grounds:

(1) That the matter did not involve interstate commerce, and,

(2) That the Norris-LaGuardia Act prohibited the granting of any injunction in a labor dispute of this nature.

That on March 23, 1932, an Act was passed by the Federal Congress called the "Norris-LaGuardia Act" (Title 29, Section 101 to 115, U. S. C. A.) and is now in full force and effect.

Forty-Seventh: That a labor dispute existed and still exists between the plaintiff dairies and the plaintiff Union and the defendant Union and the members thereof with respect to wages, terms and conditions of employment; that this cause involves a dispute between persons who are engaged in the same craft or industry, namely, the milk industry, that this cause involved a dispute between persons having a direct or indirect interest in the same industry, namely, the milk industry; that this cause involved conflicting interests in a labor dispute of persons participating therein or interested therein and that the dispute involved in this cause is a controversy concerning terms and conditions of employment.

Defendants further state that the welfare of the defendants and the members of the defendant Union are directly related and connected with the activities and manner of conduct of business as carried out by the plaintiff dairies and the manner or organization by and the alleged contract entered into by and between the plaintiff Union and the plaintiff dairies. Defendants further state upon information and belief that the direct and immediate result of the negotiations between plaintiff Union and plaintiff dairies

would tend to lower the wages and to adversely and injuriously affect the terms and conditions of employment under which the members of the defendant Union are now engaged in their employment by various dairies throughout Chicago, generally referred to as "Union dairies."

The defendants further state that in the event plaintiff Union and plaintiff dairies successfully carried on their activities so that the wages of the employees of plaintiff dairies are kept at the low level previously described
87 in this answer, and the terms and conditions of employment are kept according to the description previously given in this answer that in the future further disputes will arise between members of defendant Union and their employers now commonly referred to as "Union dairies." That the members of the defendant Union have a direct or indirect interest in the conduct of the plaintiff dairies in operating their business in such fashion so as to cause and require their employees to accept wages lower than the amounts received by the members of the defendant Union from their employers, commonly referred to as "Union dairies" engaged in similar work, that in the event the plaintiff dairies are permitted to carry on their business in such fashion as to pay to their employees the wages previously mentioned in this answer, the wages received by the members of the defendant Union from the so-called Union dairies for similar work will be substantially reduced and lowered and their hours of employment will be substantially increased and lengthened and various other items previously described in the so-called Articles of Agreement between the defendant Union and the "Union dairies" will be changed to the injury and the detriment of the members of the defendant Union, and that the social and economic welfare of the members of the defendant Union will be adversely affected by the activities and conduct of both the plaintiff dairies and the plaintiff Union.

Forty-Eighth: That within the meaning of the provisions of the Norris-LaGuardia Act a Labor dispute existed and still exists between the plaintiff dairies and plaintiff Union and the defendant Union and the various members thereof with respect to wages, terms and conditions of employment. That the plaintiffs have failed to comply with the provisions of said Norris-LaGuardia Act in that plaintiffs have failed to serve notice upon the public officials of the City of Chicago and the County of Cook and State of Illinois charged with the duty of preserving law and order requesting said public officials to assist the plaintiffs in maintaining law and order; and further that the plaintiffs

have failed to comply with the provisions of said Statute with regard to first exhausting all possible remedies whether by arbitration or otherwise before appearing
88 in a court of equity and requesting the issuance of an injunction; and further that under the provisions of said Statute a full hearing must be had by the court with testimony taken under oath subject to cross-examination and to such testimony and opposition as the defendant thereto may wish to offer.

Wherefore these defendants and each of them pray that the said cause be dismissed for want of jurisdiction or in the alternative that said Bill of Complaint be dismissed for want of equity and that these defendants and each of them obtain their reasonable costs in this behalf most wrongfully sustained by them.

Milk Wagon Drivers' Union of Chicago, Local 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, a voluntary association;
Robert G. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, Alvin F. Richards and Joseph L. Patterson, jointly and severally as defendants in the above entitled cause.
By: David A. Riskind,
Their duly authorized agent and attorney.

State of Illinois, } ss.
County of Cook. }

David A. Riskind being first duly sworn upon oath, deposes and says that he is the duly authorized agent and attorney for the defendants mentioned above; that he has read the foregoing answer by him subscribed, knows the contents thereof except to such facts as are alleged upon information and belief and that he verily believes the same to be true, and that all the other allegations are true in substance and in fact according to his knowledge thereof.

David A. Riskind.

Subscribed and sworn to before me this 27th day of May, 1938.

Ruth Finsed,
(Seal) *Notary Public.*

359 And on, to wit, the 9th day of February, 1939, there was filed in the Clerk's office of said Court a certain Amended Condensed Statement of Testimony, in words and figures following, to wit:

Filed Feb. 9, 1939. 360 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—16073) * *

CONDENSED STATEMENT OF TESTIMONY.

HARRY ENTIN, a witness on behalf of the Plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

My name is Harry Entin. For last four years I have operated a grocery store at 4833 N. Kedzie Avenue. Until three days ago I bought my dairy supplies from Wagner Dairy, but now I buy from Silvercup Dairy. The Milk Wagon Drivers Union picketed my store for thirteen days carrying signs saying "Unfair to Local Drivers—. I think 753, it said". All delivers into the store were stopped. I had to pick up all commodities myself. Because of the pickets my sales dropped 15 to 25 per cent. My windows were broken three times while I was selling this cut rate milk. I had displayed a sign of the Amalgamated Dairy Workers Local Industrial Union No. 819, but the new dairy made me remove it. The Silvercup Dairy paid for all the Wagner Milk I had in the store and removed it.

Cross-Examination by Mr. Riskind.

The driver from the Wagner Dairy gave me the Amalgamated Union sign. I am not a member of that union.

MAE SITKO, a witness on behalf of the Plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

I operate a delicatessen store at 4345 Fullerton Street, selling dairy products of Wagner Dairy. On May 3, 1938,
two men came into my store, saying they represented
361 the Milk Wagon Drivers Union and that unless I put
in Union Milk that they would picket and ruin me. These men then started picketing and are still doing so in front of my store. The picketing has chased away my customers and has had quite an effect on my business. The pickets bang on my windows with a piece of wood. Sev-

eral milk drivers and pickets congregated in front of my store with the pickets and I had to call the police who made them move on. They have stopped deliveries into my store. I am satisfied with Wagner Milk and would like to continue selling it. I displayed a sign of the Plaintiff Union in my window.

Recross Examination by Mr. Riskind.

Wagner Dairy delivered milk to my store after eight o'clock in the morning.

MAUDE CADDLE, a witness for the Plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

I own and operate a small grocery and delicatessen store. I sell dairy products of the Wagner Dairy. On May 11, 1938, a representative of the Bowman Dairy Company came into my store and asked for the Amalgamated Union sign I had in my window and offered to buy it.

Cross-Examination.

I got the Amalgamated Union sign from the Wagner driver.

JOSEPH L. BAZIK, a witness for the plaintiff, testified as follows:

Direct Examination by Mr. Seelig.

I am in the delicatessen business at 4411 N. Kimball Avenue, selling dairy products of Lake Valley Farm Products. I originally sold milk of Bowman Dairy and discontinued selling their milk in August 1937. When I did this I was picketed for two days. I wanted both Bowman's milk and cut-rate milk. For a week I did this, but two men from the Milk Wagon Drivers Union came in and said if I didn't stop selling Lake View milk they would picket my store and stop all deliveries. I refused to quit and they picketed for three days. Mr. O'Connor of the Milk Wagon Drivers Union came in and I told him I had to have cut-rate milk. I called Bowman Dairy and asked them to leave milk for

the next morning. They did not do so. Mr. O'Connor called off the pickets on Friday afternoon. Sunday night my windows were smashed. My windows were smashed again the last part of April, 1938.

362 CARLA FISCHER, a witness for the plaintiffs, testitified as follows:

Direct Examination by Mr. Seelig.

I own a grocery, delicatessen and milk store at 4008 Bell Avenue. Until a week ago I bought milk and dairy products from Lake Valley Dairy. On May 17, 1938, our windows were smashed. I had an Amalgamated Dairy Workers Union sign in my window when the windows were broken.

Cross-Examination by Mr. Riskind.

The Lake Valley Dairy drivers delivered milk to my store at eight o'clock in the morning. The Lake Valley Dairy driver gave me the Amalgamated Dairy Workers Union sign.

JOSEPH SPRY, a witness for the plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

I conduct a grocery, milk and ice cream store at 1803 W. 51st Street, selling dairy products of Lake Valley Farm Products. On May 7, 1938, two men came in my store and said that they saw I was selling cut-rate milk. They asked me if I would like to have my windows broken and told me to take the milk price sign out of my window. I removed the price sign.

JOSEPH P. MOORHATCH, a witness for the plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

I own a delicatessen, food and milk store at 163½ W. North Avenue, selling dairy products of Western-United Dairy. I have been buying from Western-United since I

was picketed two weeks ago. Before that time I bought from Wagners Dairy Products.

"Q. —And will you tell the Court what the circumstances were in connection with your changing from Wagner to Western-United?—

A. I don't care to suffer more consequences."

I was picketed on April 22, 1938, until the next morning. The delivery of supplies into my store was stopped. Western-United Dairy took out the Wagner milk, and paid me $15.00. I had been selling Wagner milk at cut-rate prices and I am now selling milk at higher prices. I would like to sell Wagner Milk.

363 GENEVIEVE ST. PIERRE, a witness for the Plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

I own a delicatessen store at 6250 S. Maplewood Avenue. I sell dairy products of Lake Valley Farm Products.

Plaintiffs Exhibit 1 (Sign of Amalgamated Dairy Workers Union, Local 819), marked for identification. I displayed an Amalgamated Union card in my window. On Monday of this week a driver came in and said they would picket my store if I didn't change dairies.

MARGARET BALIKA, a witness for the Plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

I conduct a food store at 545 W. 103rd Street, Chicago, selling dairy products of Lake Valley Farm Products. I display the Amalgamated Dairy Union sign. I had a sign in my window for 8½c milk and two men came in and asked me to take the sign down and that I should sell the milk just like they do at 11½c. Because I didn't want anything to happen I took the sign down.

SIEGFRIED WEISS, a witness for the plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

I am president of the Plaintiff, Lake Valley Farm Products. I have been in the dairy business in Chicago for nine years. I started as a driver, was in the sales department and now am managing. I have had experience pasteurizing, bottling and distributing. Lake Valley Farm Products, Inc., is an Illinois Corporation. Its pasteurizing plant is located at 5330 S. Western Avenue, Chicago, Illinois. The corporation employes about 90 persons and handles about 45,000 pounds of milk daily. The products of the dairy are distributed in and about Chicago. The dairy building and land is valued about $80,000 and machinery about $65,000 in addition to good will.

The dairy receives its milk supply daily from the Lake View Cooperative of Watertown, Wisconsin and also from the Slinger, Wisconsin plant. The Watertown plant receives its milk from the neighborhood surrounding its plant. The milk is brought to the Chicago plant in au-
364 tomobile tank trucks and we receive two to three tanks daily. Cream comes in 10 gallon cans by automobile truck from Watertown and Slinger, Wisconsin. The trucks carrying cream to Lake Valley Farm Products also carry cream to other Chicago dairies. I have been employed by other dairies in Chicago, and have purchased milk for my own and other dairies. About 55 to 60 per cent of the milk that is distributed in Chicago comes from outside the State of Illinois. 70 to 80 per cent of the cream is separated from milk produced in other states. It comes from Wisconsin, Indiana, Michigan; cream comes as far as 200 miles from Chicago. It is a frequent practice for a dairy to obtain its milk supply from both Illinois and Wisconsin. There is no way of distinguishing Wisconsin bottled from Illinois bottled milk. The milk is received from the tank trucks and pasteurized. Pasteurizing takes forty-five minutes and then it is cooled, filled and capped. Then it is put in the ice box and shipped out. Less than twelve hours separate the receiving from tank trucks to distribution to the retail stores.

Our milk is distributed by men who own their own trucks and they buy the milk wholesale at our plant for cash and they distribute it to the stores; the stores take an average of eight to ten cases each; we also have about twenty-five

men that sell retail; all of these men are known as "vendors". They receive no salary. They are not on our payroll; are not employees; we have no control over them. The vendors pick up the milk at the dairy from 5:00 o'clock to 8:00 o'clock in the morning and return from eleven to two o'clock. The average wholesale vendor distributing to stores nets between $50 and $75 a week after all expenses.

The vendors distribute an average of 75 to 100 cases daily in three and one-half to five hours. A case of milk is twelve quarts and a quart is referred to as a "point" by dairy men. The average retail route of a dairy distributes a daily average of about 199 points by house to house delivery, requiring six to seven hours. Our vendors work six days each week. On the seventh day a helper handles the route. These helpers are young men just out of school, about 18 or 19 years old.

The stores distributing our milk are generally grocer-
365 ries, delicatessens selling milk and cream, and sometimes ice cream. About 400 stores sell our products. There are about between 2500 and 3000 stores in Chicago selling cut-rate milk. About 40% of the milk is sold in stores.

The cost of delivering a point of milk on a retail route (to the doorstep of the consumer) assuming a drivers' wage of $48.00 per week, is over 4c. The cost of delivering a point of milk on a wholesale route (to milk stores) assuming $48.00 weekly to the driver, is about ¾c. the generally prevailing price of retail doorstep delivered milk in Chicago, is 12c; the cut-rate price in milk stores varies from 8½c to 10c. Nine and a half-cents is the average. Milk bottles vary in cost from 5½c to over 6c each. On a retail route the average bottle makes only about eight trips before it is lost. On store deliveries where no bottle deposit is charged the average is only about three trips. Our dairy charges a two cent bottle deposit. The Milk Bottle Exchange charges up to 2c each to the dairy to recover its lost bottles. Our bottles make about 18 trips and we save about ½c on each trip. The Lake Valley Farm Products does not own or is not interested in the ownership of any of the distributing milk stores.

Cut-rate milk has been sold in Chicago since 1932 or 1933. After the depression started the people were given a chance to buy milk at cash and carry at a savings of about 2c a quart. There is a need for this system. The experience of the cut-rate dairies and milk stores has been characterized by the breaking of windows, stores burned up,

bombings, stench bombs thrown into stores, stopping of all deliveries in the stores, unlawful picketing and stopping and molesting of customers.

Lake Valley Farm Products was bombed twice. One of our delivery trucks was dumped into the river, a truck driver was kidnapped and the truck burned.

The Edgewater Dairy, another independent cut-rate dairy, was bombed in 1934.

During the past five years I saw dozens of stores selling the products of this dairy with broken windows.

In the case of the Blue Ribbon Dairy, another cut-rate dairy I saw their men who had received bruises. I observed broken windows at stores selling Blue Ribbon cut-rate 366 milk.

During the past five years I observed broken windows at stores selling Meadowmoor Dairy cut-rate milk and the trucks of this dairy turned over. This last happened in May, 1938. During the last five years, I have seen broken windows at stores selling the cut-rate dairy products of Wagner Dairy and Cloverdale Dairy.

Over one hundred stores selling Lake Valley products have been picketed. Quite a number of these stores have been picketed in the last thirty days, by the Milk Wagon Drivers Union, Local 753. As a result of picketing at the store at 93rd and South Park Avenue, the store lost 80% of its business.

The members of the Milk Wagon Drivers Union are employed by the dairies distributing the majority of the milk in Chicago. If we ceased distributing independent milk, the Milk Wagon Drivers Union would distribute all the milk. During the past thirty days I have observed that our men have put up signs of the Amalgamated Dairy Workers Union in the stores selling our product. During this period we have lost quite a number of stores. During this time I observed pickets at the store at 43rd and Wood Street, at 93rd and South Park, at 8140 Exchange Avenue, at least thirty to fifty stores where I observed pickets. I saw broken windows within the past week at 3810 Lake Park; also at 2547 W. 51st Street. The picketing is carried on at this time. Fifteen to twenty stores have been lost by us in the past thirty days. This is an abnormally large loss of stores. I can not estimate the large number of retail patrons who have discontinued purchasing our products because of violence or picketing.

THOMAS J. DARCEY, a witness for the plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

I live in Watertown, Wisconsin. I am a farmer and I am secretary of the Plaintiff Lake View Cooperative. The Lake View Cooperative is a farmer's cooperative dairy corporation, organized under the Wisconsin Agricultural Act. We operate a plant at Watertown, Wisconsin. The value of the plant is about $35,000.00. The milk is all
367 produced in Wisconsin within a radius of twenty miles of the plant. The milk is brought to the plant and is weighed, sampled and tested, run over the coolers and sent to Chicago in automobile tank trucks. The amount we ship into Chicago varies according to our orders, up to fifty or sixty thousand pounds daily. In addition to milk shipped to the Lake Valley Farm Products, we also sell milk to the Lawndale, Ogden and Farmers Dairy. The milk shipped to Lake Valley is indistinguishable from milk shipped to other dairies. We also ship cream to Lake Valley. About one half of our supply goes to Lake Valley. I am familiar with milk distribution in Chicago. About forty per cent of all the bottled milk sold in Chicago, is produced in Wisconsin, and in the case of cream about 75%. Milk is shipped into Chicago from Michigan, Indiana, Wisconsin and Iowa.

Cross-Examination by Mr. Riskind.

We do not process or pasteurize the milk in Wisconsin. We ship the milk as raw milk.

JOHN E. IGOE, a witness for plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

I distribute the products of Blue Ribbon Dairy. I am Vice President of the Amalgamated Dairy Workers Local Industrial Union, No. 819. I own an automobile truck. I pick up milk at the dairy and then I distribute it to twelve or thirteen stores on a wholesale route. I sell about 1000 points a day. I pick up the cases of milk at about 6:00

o'clock in the morning and I am through with my work and back at the dairy at 10:00 o'clock. My net income is about $60.00 a week. I work 4 to 6 days a week. I have a helper. He is 19 years old. I pay him $30.00 a week. He works from 6 to 10 in the morning, six days a week. The Amalgamated Dairy Workers Union is affiliated with the Committee for Industrial Organization. Nicholas Kost, Jr. is president; Joseph Igoe is secretary and treasurer; Cass Zalewski is recording secretary. They all are wholesale milk vendors. Our Union takes in all unorganized dairy workers of every kind. We are an industrial union, not a craft union. The workers and vendors of Lake Valley Dairy and Wagner Dairy are members. The union started in March. We have about one hundred thirty mem-
368 bers. We have not sought any members from dairies employing members of the Milk Wagon Drivers Union; only from the independent dairies that are not organized.

Witness identifies Exhibit 2 for identification as form of union contract with dairies.

We haven't any agreement with the dairies concerning wages, hours or terms or conditions of employment as yet.

We prepare to get up certain agreements concerning wages, hours, and terms and conditions of employment. I am acquainted with many milk vendors. The average earnings of vendors for the Lake Valley Farm Products is about $50.00 a week or better. I don't know what the helpers get. I don't know if all routes have helpers. No helpers work more than six days a week. The vendors start at about 5:30 A. M. and the last one comes in at noon, the majority anywhere from 9:30 on. The average number of points on a route is 1200.

JESSE ELMER WILSON, a witness for the plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

I own a grocery and milk store at 1815 N. Troy Street, selling the dairy products of Wagner Dairy Co. I sell cut-rate milk at 8½¢. On May 5, 1938, two men came into my store and said they were from the Milk Wagon Driver's Union and told me I could not sell milk at that price, and that Borden-Wieland and Bowman would not stand for it. They got pretty hostile and when I said I was going to con-

tinue selling Wagner Milk they said I would not because they were going to get Wagner. On July 27, 1937, a man named Charles Segale was erasing price signs from the inside of my windows when I returned from the market and told me I had to sell Bowman or Borden-Wieland milk. I told him I would sell what I wanted to in my store. He started an argument, called me names, struck me, and knocked me back against the shelving in the store. I picked up a rod and hit him and drove him out of the store, he swore at me and said he would bomb the store. On the night of July 30, there was a stench bomb. My windows were all broken. Charles Segale is a picket for the Milk Wagon Drivers Union. While Segale was in the store another picket was outside in the car. When I was put-
369 ting Segale out of the store he ran across the street and swore at me.

About ten days ago the same men who came in and on May 5, came back and said they were from the Drivers Union and that I couldn't sell milk at that price; that I must take Borden-Wieland or Bowman, some of their milk. Then one of the fellows pulled down a price sign at 7½¢ I had in my window and put it in his pocket. My store was picketed for five weeks a year ago last July and August by the Drivers Union. I am here in response to a subpoena; have not discussed this evidence with anyone, and have never before seen the attorney for the plaintiffs. I display an Amalgamated dairy workers Union sign in my window at this time.

Cross-Examination by Mr. Riskind.

I saw you (indicating defense counsel Riskind) in the Court rooms of Judge Caplan where I filed a complaint against Segale and Wald. It was thirty days before they issued a warrant. I made an application immediately when it happened and the desk sergeant said that the Milk Wagon Drivers Union and their lawyers were too big, and so the police would not make that warrant out. One of the men (Seagale and Wald) had a gun in his pocket. I have only seen Mr. Wagner once when I called for milk. I did not know I would testify in this case until I was served with a subpoena this morning, and I have not talked with anyone concerning this case.

SIEGFRIED WEISS, recalled as a witness on behalf of the plaintiffs testified as follows:

Direct Examination by Mr. Seelig.

The words, "Property of and filled by the Lake Valley Farm Products, Inc." appears on the bottles and cases used by our dairy. When I testified the other day that about 60% of the milk comes from outside of the state of Illinois, I was correct, figuring cream in that amount. I know of my own knowledge that Meadowmoor Dairy, Wagner Dairy, Cloverdale Dairy and Blue Ribbon Dairy have been cut rate dairies, selling milk at lower prices than delivered milk for the past few years.

Cross-Examination by Mr. Riskind.

I know how to pasteurize and can test milk. I am a graduate of the Chicago Dairy College. To pasteurize milk is to bring the milk up to a temperature of 145° and keep
370 it there for one half hour to kill bacteria. The raw milk is received at our platform in tank trucks. We have times when we pasteurize direct from the tank truck. We connect the tank right to the pasteurizer. When the milk is put in the receiving vat it is taken right out again sometimes, and sometimes it stays in for six or seven hours. Nothing is done there, except cooling. Five or six times a week we pasteurize directly from the tank trucks. This is about 15,000 gallons a week. We have between twenty and thirty thousand gallons placed in the vats per week for a period of six to 8 hours. After the milk is pasteurized it is cooled down to 35°. This takes about five minutes for one tank of 200 gallons. It does not remain in the cooler at all. It turns right over and is bottled at about 120 bottles a minute, an average of about 18,000 to 20,000 bottles a day. The bottling and sealing is one process. (Argument of Counsel appearing on pages 201-217 of stenographic report is omitted.) We pay $2.05 per hundred lbs. of milk. One hundred pounds of milk is 46½ quarts. It costs us nearly 4½¢ a quart for raw milk. The cost is one and one half cents per quart, for all expenses of pasteurizing, bottling, caps, office, overhead, investment and everything. So the total cost is 6¢. We employ no drivers. We do not own the trucks. We do not hire these vendors. They are independent contractors. I have seen helpers on your union (referring to the defend-

ant Union) trucks too. I know some of these helpers get fifty cents a day from your (referring to the defendant union) members. We have no control over the vendors. I don't know if they work six or seven days a week. Our milk is sold for 8½¢, 9½¢ and 10½¢ in the cut rate stores. We have stores that sell it for 12¢. There is no uniform price for cut rate milk. As an average 8½¢ and 9½¢.

I first learned about Local 819 when Kost, Zalewski and John Igoe, representing the union came into my office. It was a few months ago in April. They told me they were organizing, or had organized our men in the dairy and they wanted to be recognized as a bargaining party. I asked them questions. They said their purpose was to better the men's wages and hours, that we should come together and set up a wage scale. If we signed up we would work out a wage scale in sixty days. They told me that all workers were eligible for the union. It was either early in April or late March. In April they came back to have the con-
371 tract signed—about ten days later. We signed a contract. We discussed wages and hours and arranged that we would work out a scale. For the time the present wages were to stand. Mr. Kaiser is Vice-President of our dairy. Mr. Kost is a vendor of our products. I think he is a nephew of Mr. Kaiser. Kost has been a vendor for six or seven years. I think the Union dues has been paid by the men. We pay all our help in checks.

We processed approximately 1,200,000 pounds of milk in January 1938, and in December 1937, about the same amount. Our books indicate the quantity of milk sold. The vendors secure their milk supply from 4:30 in the morning and return between ten and one o'clock. We don't pay them wages. We have the vendor system. We have contracts and they are bound to the dairy. They own their own trucks and pay their own expenses. I know the amount the vendors earn from the amount of milk they take out and the profit that is made on it. They average 1½¢ per quart on 1200 quarts a day. The gross profit is $109.20 per week. The truck costs three dollars a day, leaving $88.00 net. For 1200 points they don't need a helper with our stores. That is just to help them out. The three dollars a day includes everything. It includes insurance, repairs, depreciation, gasoline. If they have an extra man for one day, that much would come off. The vendor pays us 2¢ for bottles and he gets 2¢ from the storekeepers, so the storekeeper pays any loss. The dairy takes back and credits the vendor with all unsold products.

A great deal of violence took place in 1934 and 1935 against our stores and some of our vendors. We made complaints to the police and public officials. In 1934 we complained to the States Attorney's office, to Captain Egan or Lieutenant Tracy. I didn't hear anything from it. In 1935 complaints were made again. We called them up to send Captain Tracy or Lieutenant Egan. In 1936 complaints were again made to public officials by the dairy and some stores did when there was violence. In 1936 and 1937, there was no violence to our vendors dairy, only to the stores selling our milk and we complained. In 1938 vendors trucks got stopped. No complaint was made about these trucks.

Redirect Examination by Mr. Seelig.

Acts of violence were committed to stores distributing our products during 1936, 1937 and 1938.

372 Plaintiffs' exhibit No. 4, being contract between dairy and Amalgamated Union, dated April 18, 1938, is identified.

In 1928 or 1929, I was a helper on a milk route for the Capitol Dairy. That dairy employed members of the defendant union. The wage scale then was $37.50, but I got 50¢ a day. If a driver on a route of the defendant union sells his milk at less than the prevailing price of 12¢ a quart, he would really make less than the scale of $48.00. This is a prevailing practice. Each driver sells quite a number of bottles below the set price. All milk that comes into our dairy is pasteurized and reaches the store on the same day as received.

Recross Examination by Mr. Riskind.

Both milkmen and customers have told me that milk is sold by members of the Drivers Union on routes for less than 12¢. This loss would be deducted from their wages.

JOHN IGOE, recalled as a witness on behalf of the Plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

To my knowledge all workers of Lake Valley Farm Products and Wagner Dairy Products are members of the Amalgamated Dairy Workers Union.

Witness further identifies Exhibit 4. Plaintiffs' Exhibit 5, being contract between Amalgamated Union and Wagner Dairy Products is identified.

Our Union has members with other cut-rate dairies. For the past five years, as a vendor, I have observed the cut-rate stores, particularly on the northwest side. I have seen broken windows and pickets in front of stores. About eight days ago I had pickets in front of our stores where the windows were broken. The store sold cut-rate milk of the Blue Ribbon Dairy, that I distribute for. As far as I know all stores selling milk of Lake Valley or Wagner display the Union card of the Amargamated Dairy Workers.

Cross-Examination by Mr. Riskind.

Our Union was formed some time in March. We got our charter April 7, 1938. Before that we were organizing and had about fifty members. Our election of officers was held at the Amalgamated Union building on Ashland Boulevard and Van Buren Street, on the second floor. About seventy-five members were there. The vote was oral. None
373 of our officers receive any salary. Our office is at 11 S. La Salle Street. The Union rented this office, issued checks and paid the rent. Some time in March we were thinking of organizing and Mr. Kost, Mr. Zalewski and I went to see Mr. Slotkin. Aften that we went out and started to organize. I am a milk vendor. I consider myself an independent contractor. I know that wholesale drivers belong to 753. The Blue Ribbon Dairy has a man to take the route on the seventh day. I have to pay him if he takes my route. I pay 6½¢ for a quart of milk and pay my helper $30.00 a week. I sell to the stores at 7½¢ a quart. I sell 1000 quarts a day besides cream also. I sell 300 to 400 points of cream or better. I make 3¢ on a bottle of cream. Cream costs me 25¢ a quart and there are four points in a quart of cream. I make 4¢ profit on each quart of cream. My gross is about $16.00 a day. Insurance is 25¢ a day; upkeep on truck is about $2.00 a day, including depreciation and gas and oil. The store keeper is charged for all bottles and pays for all breakage; I have no loss. Licenses total $75.00 a year. I don't give premiums or pay any customer to secure a store. I don't know of any vendors that have ever paid for a store. I serve thirteen stores altogether. I used to serve fifteen, but I lost them on account of pickets.

Kost and Slotkin went to Washington to get our union charter. The Union did not have a treasury at that time.

I have over $500.00 of my own money in the Union. We all put up our money and got $200.00 together to go to Washington. Our Union keeps books and records at our office. We have a girl in our office from nine until five. Mr. Slotkin is our organizer. Our By-laws are kept in our office. Our dues are three dollars a month. We started collecting for May from about one hundred members. We have members with Blue Ribbon Dairy and Edgewater Dairy. As yet we have no specific agreement as to wages or hours of employment; we are working on it. The organization of our union was never discussed with Lake Valley or Wagner Dairy. Mr. Kost and Mr. Kaiser had the same address. We are organizing the independent field. We take in drivers as well as vendors. As yet we don't know the hours of employment of Mr. Wagner's drivers or salary. We will try to raise their salary if it is low.

Redirect Examination by Mr. Seelig.

Before I became active in working for this union, I
374 worked six days a week and only had a helper one day a week. Since I have been working in the union, I have less time to put in on my route and that is why I have my helper more days a week.

SIEGFRIED WEISS, a witness having testified for the plaintiffs, recalled for additional cross-examination by Mr. Riskind, testified as follows:

Our regular supply of milk is from Wisconsin; only very seldom, if we run short, and must have some extra milk, it may be possible we buy from Illinois. It would then be possible that this milk would be commingled with Wisconsin milk.

FRANK WAGNER, a witness for the plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

At present I manage Wagner Dairy Products, one of the plaintiffs. Josef Wagner, Sr., my father, is the owner of Wagner Dairy. I have been in the dairy business for twenty-five years, and have had experience in all dairy lines,

pasteurizing, testing, receiving, milk out of the country. Our pasteurizing plant is at 5407 W. 24th Street, Cicero, Illinois. It is a two story building containing pasteurizers, coolers, bottlers, bottle washers, cream separators, boiler room and milk case washer. We employ twelve men inside of the dairy, and receive about 40,000 pounds of milk daily. Wagner Dairy Products has distributed its products in Chicago, Cicero, Oak Park, Berwyn, and Forest Park for 25 years. The pasteurizing plant is valued at approximately $50,000.

Our milk is received from our country plant at Richmond, Illinois, two miles from the Wisconsin boundary line. The Richmond plant receives its milk from farmers within a radius of thirty miles. Some of these farmers have their farms in Wisconsin. The farmers bring their milk to the plant, where it is received, weighed, a sample for testing purposes is removed, is placed in a vat and runs into a cooler and brought down to 35° and from there directly into our stainless steel automobile trucks. Within two hours of the receipt from the farmers it is in the automobile trucks and on the way to our Cicero plant. That takes about one hour and thirty minutes. Our pasteurizing machinery is able to handle 16,000 pounds of milk per hour.

The milk is held at the required temperature for thirty 375 minutes. After pasteurizing the milk is run over the cooler and is bottled at once. We bottle 120 bottles a minute. Within five hours all milk received at our plant, goes out as bottled milk. We receive cream from Oregon, Wisconsin. It is shipped to us in 10 gallon cans in a refrigerator automobile truck. About 40% of all milk sold in Chicago comes from Wisconsin. About 75% of all cream sold in Chicago comes from Wisconsin. Our dairy distributes its products through 338 cut-rate stores—about 90% are in Chicago.

The contract with the Amalgamated Dairy Union was signed on the date it bears. We have no trouble with our workers. In connection with my business, I have observed the cut-rate milk stores in Chicago. These stores are delicatessens or groceries and there are also milk stores handling only dairy products, eggs, butter and cheese in addition to milk and cream. I am very familiar with the Milk Wagon Drivers Union, Local 753, and I know its officers. The defendant union accepts drivers who will go out and sell milk for twelve cents a quart.

Mr. Riskind: This is a craft union having by-laws and a constitution and they speak for themselves, and in an answer of that type we are — — —.

Our dairy has been a cut-rate dairy since 1930. The cut-rate dairy gives the public a saving of two cents a quart. When the wagon driver delivers the milk to the house he must pay that in addition. It runs over five cents per quart for doorstep delivery.

During the past five years, at these cut rate stores in Chicago, I have observed picketing, broken windows, stench bombs thrown into the stores ruining all food. Where there was picketing by the Defendant Union, the stores have been unable to get deliveries of any kind—bread, groceries. I have observed broken windows. Where the stores had plate glass insurance, it was cancelled and they were unable to get more. They picket the store for a week and keep bothering the storekeeper and if they can't influence him to quit selling our product, they take the pickets away and in two days windows are broken and stench bombs are thrown in; they also come in and want to fight with the storekeeper. This has taken place since 1931; in every year, continuously, continuing all the time. I have seen pickets at
hundreds of cut-rate stores. I have seen 50 to 100 stores
376 picketed within the past thirty days and at the present
time. In 1932, the equipment of the Edgewater Dairy, a cut-rate dairy was broken up with sledge hammers and its pasteurizers punctured. Just recently at Belmont Dairy, all the machinery was absolutely wrecked. At Blue Ribbon Dairy pasteurizers were hammered up, coolers broken. Wagner Dairy in 1931 was bombed and the building wrecked. In 1932 they threw another bomb in there and wrecked the building. In 1933 they threw a great big bomb and a lady was injured. These acts were reported to the State's Attorney and to the Cicero police. When stores selling our products have been picketed, the store is affected and it does not sell the amount of milk it has been selling.

Our cost of store delivery is about ¾c per point. The average cost of delivering a point on a retail route is about 5¼c. A point is a quart of milk, or a half pint of cream. The average store takes from ten to twelve cases, twelve quarts in one case. All of our products are sold through cut-rate stores. If cut-rate stores in Chicago were to discontinue the purchase of our products, we would have no other outlet for our products. The cut-rate dairies do not employ members of the Milk Wagon Drivers Union, Local 753. The members of that union distribute the larger portion of milk distributed in Chicago, and if there were no cut-rate distribution, the defendant union would distribute all the milk—would be sold by the big dairies, Bowman, Borden, Wanzer.

In August 1933, I was driving a load of milk coming in from Wisconsin, east down Ogden Avenue, to the City Sanitary Milk Company. I was stopped about 4300 by a big group of men standing all over the street and sidewalks. Two men jumped on my truck on each side and had guns into my ribs. They swore at me and made me get out of the truck. In the crowd I recognized the defendants Steve Sumner, Ray Bryant and Bob Fitchie. The gunmen put me in a car and told me, "Now, you are not going to sell milk for any price you feel like. Get a hundred and twenty-four dollars and come back here, and we are going to sign you up to our Union." They took me to Cicero, and left me in front of our dairy. I got into the Dairy and call the State's Attorney's office and told them what happened. They said they would be right over. I also communicated with the
377 Chief of Police of Cicero. I was unable to get the one hundred twenty-four dollars. Dad, and I got in his car. We had ten dollars. We talked to Ray Bryant. They had a hundred men there from the union. Bryant said they would accept ten dollars and let us go about our business, so we gave him the money and I got on my truck and delivered the milk. Nothing further was done about joining. I have notified the State's Attorney at other times concerning violence. Two months ago I talked to Mr. Crowley about broken windows. Also during 1936 and 1937. Since 1932 I have been calling the State's Attorney's office frequently.

Cross-Examination by Mr. Riskind.

We have ten dairy drivers. They work six days a week. We have an extra man for the seventh day. They work from five until ten or eleven in the morning. Wages range from twenty to thirty five dollars. Our men work less hours than members of the defendant union; because they cannot deliver milk later to the storekeepers. We have a little home delivery in Cicero, about 125 points. We have helpers on the wholesale routes because we can give good delivery; they get back in time; it is easier for two men to handle. The plant at Richmond, Illinois, is owned by Josef Wagner, Sr. Pasteurizing takes about 45 minutes. When I was held up no officers came to see me from the State's Attorney's office. I only wanted my truck released. Either Bryant or Sumner gave me a receipt for the ten dollars.

Further Cross-Examination by Mr. Riskind.

I do not know who smashed the machinery of the Belmont Dairy.

378 MINNA KUELLMAR, a witness on behalf of the Plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

My name is Minna Kuellmar. I own a grocery and milk store at 4411 Broadway, Chicago, Illinois. On or about March 13, 1938, two milk drivers who told me they were from the Borden-Weiland Dairy Company, came in my store and threatened me and warned that if I wouldn't take their milk, I wouldn't be in business any more. Three years ago I was in business at the same address and had another store at 4640 Broadway. At that time our store windows were broken. Also there was a milk strike on and my driver drove the truck and my husband and I followed him, and as we got to the Outer Drive, a car pulled up with about five men in it, and forced the driver over to the curb and shot at him and missed him and my husband and I shouted at the five fellows, and took the driver out of the truck and ran back to Broadway and Montrose to get a police officer. By the time we got back, they had poured gas on the truck and it was on fire. The driver put the fire out with a fire extinguisher. In the meantime, a couple of ladies came along and these men saw them and they thought it was us, and they took a crank and smashed the windshield of the ladies' car and cut her face, and it was full of blood.

We took the license number, and it was Philip Brown and he worked for the Wieland Dairy Company. The case went to Court and an outside settlement was made for some reason. I was present in Court, and Mr. Riskind (indicating David Riskind, attorney for Defendants) was in Court in connection with the defense of Mr. Brown.

At all these times I was selling cut rate milk.

Cross-Examination by Mr. Riskind.

Philip Brown was tried before Judge Philip Finnegan. I am not sure whether Judge Finnegan stated he wanted certain monies paid to my husband and gave the man probation. I was present in Court and had a lawyer representing me.

Our stores were not picketed, but a fellow smashed our windows at 4640 Broadway, Chicago, Illinois.

379 The strike was a farmer strike, but not our farmers. Ours brought the milk in. At the time I was selling Lake View Dairy milk products. I have sold them for five

years and intend to go on selling them. I could not remain in business, if I were not permitted to sell cut rate milk. I met Mr. Weiss five years ago and have not seen him in the last few days. I was served with a subpoena to testify. I have a card from the Plaintiff union in my window.

JOSEPH HALL, a witness on behalf of the Plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

My name is Josephine Hall. I own a store at 2450 W. 51st Street, selling dairy products, a little canned goods, candy, and ice cream. I have been in business for four years and buy dairy products from the Lake View Dairy. I am selling my milk at cut rate prices. Three years ago, about the 2nd day I was opened, a union official came in. His name was Mr. O'Connor. He asked me if this was the milk I was going to sell and he said he was from the Union and was taking the milk out. I got kind of frantic and told him I had just paid for it and I was trying to make a living. He promised to come back, if we didn't throw the milk out. He said that they wouldn't let us alone. A few days later my window was broke and I had no money to put a window in, so I put a big siding on there. They carried that away and I finally put a piece of tin on and they broke it the second time. My window was broken just the other day. They are supposed to work for the United States Treasury. I was selling cut rate milk all this time.

Cross-Examination by Mr. Riskind.

I have not been picketed. In my window, I have a sign of the Plaintiff Union (referring to plaintiff's Exhibit 1). Mr. O'Connor is supposed to be an officer of the Union that supplies men to Borden and Bowman. My milk driver gave me the Union sign. He did not mention the Milk Wagon Drivers Union Local 753.

John O'Connor told me who he was and left a card with me at the time. He said he was an officer of the Union.
380 I made a complaint to the police and he was arrested and I was threatened again. After he was arrested, somebody else came and said, "Do you want a bomb in your place" and I got scared and dropped the charge. This second man was kind of short, looked very much like O'Connor. I did not go to the police station, as I got kind of scared

and they just dismissed the case for want of prosecution. When I told the police Mr. O'Connor's name, they knew who he was and picked him up. I turned his card over to the police. A lot of people said it was him at the time. Gus Palmer of the Lake View Dairy said it was him from the description. They had O'Connor at the 63rd Street Station and the case was to come up in the Stock Yards Court and I didn't go and it was dismissed for want of prosecution.

ALBINA PUSZKIEWICZ, a witness on behalf of the Plaintiffs, testified, as follows:

Direct Examination by Mr. Seelig.

My name is Albina Puszkiewicz, I conduct a milk store at 8140 Exchange Avenue, Chicago, Illinois, and sell milk of the Lake Valley Farm Products at cut rate prices. On May 6, 1938, Mr. O'Connor came into the store and asked us if we would continue to sell this milk. I said yes, and he said they will have to picket us. I told him that selling this milk is our bread and butter and that because the neighborhood is very poor, nobody would buy the other milk. The next day, they started picketing. After about three days, one of their drivers came in and asked if I would be interested in selling his milk. I said that it all depends on the price. He said he would be willing to give me a reasonable price, and he brought in a case of his milk and the pickets left. Two days later, the driver came back and said that I couldn't sell their milk and cut rate milk in the same store, because it is just not being done. I told him to go ahead and picket, because their milk was not moving at all. The pickets came back again and the next day the driver came over and said he had it fixed up and I would be able to sell the two different kinds of milk. He brought in two cases of milk. This driver if from Hunding Dairy. I knew what he was up to all the time. I knew I had to get the Lake View
381 out of there. The pickets were there three different times, until I could not do it any more. My husband is an invalid and I had to go and bring all my groceries in myself. I sell Lake Valley at 9½c and Hunding Dairy at 10c straight. It all depends on the price. That is what the people are interested in.

The pickets that were there the first time, were nice fellows and they kept on walking, but the second crew stood in the doorway and my sales went down one-half

the amount; they would not let the women pass by and they took up the whole sidewalk and one woman came in and had to go around, and a lady came in and said would it be safe for her little girl to come in. She was afraid she would be hit on the head with a bottle.

Mr. Riskind: I object to that and ask that it be stricken.

* * * * * *

The Master: Strike it out.

Cross-Examination by Mr. Riskind.

Mr. O'Connor did not threaten me, he told me the reason these dairies were able to sell cut rate milk, was because they weren't paying the drivers $48.00 per week. The pickets said they didn't recognize the Union Sign of the Amalgamated Dairy Workers. Our milk driver, Cass Zalewski gave me the Union Sign. He told me I would be safe if I would put the sign in my window; they had joined the Union and they were organized.

MARIE LAYCHAK, a witness on behalf of the Plaintiffs, testified as follows:

Redirect Examination by Mr. Seelig.

My name is Marie Laychak. I have a little lunch room at 936 E. 93rd Street. I did buy milk from Lake View, but now I buy from Bowman Dairy Company, since April. They picketed me for ten days and I had to give up. My business is primarily a restaurant, there isn't enough there either way to make a fair living, so that is why I took in the milk.

Cross-Examination by Mr. Riskind.

I intended to build up a dairy store by taking in cut rate milk.

382 The pickets that were in front of my store were very insulting to everybody that walked by. They went out in front of the place and kept singing all the time, "She sells water, she sells water," every child that came along they said, "Your mother should be ashamed to send you here, because they are not selling pure milk." I heard this. The picketing did not affect the sale of milk.

Redirect Examination by Mr. Seelig.

I sold an average of five cases a day besides my restaurant business.

NICHOLAS P. KOST, JR., a witness on behalf of the Plaintiff, testified as follows:

Direct Examination by Mr. Seelig.

My name is Nicholas P. Kost, Jr. I live at 420 Surf Street. I am a nephew of Mr. Kaiser, who is Vice President of the Lake Valley Dairy. I have three or four uncles in the milk business at this time. My father is in the business with the Bowman Dairy. He is a member of the Milk Wagon Drivers Union, Local 753. I have one uncle who is a member of that Union. At former times three other uncles were members of the Defendant Union. A good part of my family is in the dairy business.

Plaintiff's Exhibit No. 6, (Union Button of Amalgamated Dairy Workers) is admitted in evidence.

All of the members of our Union have these buttons. They were ordered in the latter part of April and received in the early part of May.

Plaintiff's Exhibit No. 7, (Constitution and By-Laws of Amalgamated Dairy Workers Union) is admitted in evidence.

Cross-Examination by Mr. Riskind.

I am associated with the Lake Valley Dairy since 1933. I lived at the same address as Mr. Kaiser for two years. My dad owns the building. My father has been a member of 753 for the last 20 years. I have a helper on my truck, I pay him $35.00 a week. He works six days a week. I run the route one day a week. For the last couple of weeks I have been busy on this case, and I have not been able to do anything else, but before that time, I was on the route all the time.

383 I know that the scale of wages of Milk Wagon Drivers Union Local 753 is $48.00 per week. My gross earnings are about a $100.00 per week. My expenses are between $15.00 and $20.00 per week.

I met Mr. Slotkin some time in the early part of March, 1938.

I saw our constitution and by-laws first about three

weeks ago when they were prepared by the Executive Board and our attorney.

John Igoe sells dairy supplies for the Uptown Blue Ribbon Dairy; Joe Igoe and Zalewski for Lake Valley Farm Products.

I have known Mr. Igoe for three or four years. We used to meet every morning and talk about these things and we have talked quite often about starting a Union. I first saw the Charter in Washington, D. C. on April 7. Mr. Slotkin and I went to Washington. The first time we talked to Mr. Seelig about this charter was just after we received it. The office in Washington gave us a temporary charter and sent us the original. The original is hanging in our office now. I did not talk with Mr. Kaiser about our Union until after we received our charter and have never mentioned in any manner or form that we intended to form this organization. I only see him about once a week. I did not talk to Mr. Wagner about the organization being formed before April 8. I see him every two months or so. We saw him on the 12th or 15th after we received our Charter. Joseph Igoe and I went to the Wagner Dairy and told him we had his men signed up and had an Agreement for him to sign. Mr. Slotkin and Joseph Igoe signed up the men for the Wagner Dairy. I helped in organizing the men of the Lake Valley Dairy. We had a meeting on February 26, 1938, at Capitol Hall, on Kedzie Avenue, all of the men present were vendors. At no time was Mr. Weiss or Mr. Kaiser informed of the meeting or the organization, nor did they attend any meeting. We were organizing for our men and we didn't deem it necessary to let the employers know until after we received our charter. Before April 8, we held a meeting in the Amalgamated Building of the Lake Valley men. At the Blue Ribbon Dairy there was a meeting about two weeks ago in the dairy itself, for the purpose of organizing the plant. We talked to the employees, but not to the employer at that time. Mr. Slotkin did the talking. He is paid $25.00
a week for his organizing work. We met Mr. Slotkin
384 in the early part of March. Us four boys had been
asking about this organization and we happened to hear mention of Mr. Slotkin; that he was in some way connected with the C. I. O.

Besides Mr. Kaiser, my uncle Andrew Adams is in the milk business, and there was one that worked for Western-United. My uncle Frank Kaiser has three routes running for Belmont Farms right now.

I was present when the Agreement was entered into

between the Wagner Dairy and Local 819. It was signed in our office. We understood Frank Wagner to be the manager of the plant. We had been out to see him and he said that he would drop down to our office and talk this over. After the men were signed up, Frank Wagner became a member. Frank Wagner has a membership card. We received dues from Mr. Wagner. We have received no other monies from the Wagner Dairy Company, besides this $8.00 dues. Nor have we received any money from the Lake Valley Dairy nor from Mr. Kaiser. Mr. Slotkin's expenses were paid by Mr. Joseph Igoe. We had no money in our organization at that time. Mr. Zalewski and myself also put money up. We intend to be reimbursed by the Union.

We do not intend to compete with the Milk Wagon Drivers Union, Local 753, for membership. All we intend to do is get in the unorganized plants in our Union. In our agreement, we intend to have a committee to pass on wages and hours. We are sending out notices today to have a meeting the last part of this week concerning wages and hours. We do not regard Frank Wagner as an employer.

Cross-Examination by Mr. Seelig.

I am twenty-four (24) years old. During the month of March, a meeting was had of all the members of our Union. We organized the workers of the Lake Valley Dairy first. The idea of unionizing the dairy workers of the cut-rate and independent dairies was formulated during the end of February. About 55 or 60 members attended our second meeting, at which time our affiliation with the C. I. O. was discussed. The four officers of our Union advanced various sums of money to get it started.

385 We have sought to organize the men from any dairy that are not members of any Union. Our activities have been confined entirely to dairies that have been unorganized. There is no desire on our part to smash the Milk Wagon Drivers Union Local 753.

Redirect Examination by Mr. Brussel.

The meeting at the Amalgamated Building took place about the middle of March. I was elected President at the meeting on February 26. The officers were re-elected in the Second Meeting.

We have held regular meetings after we obtained our charter. About fifty men were present at our last meeting. They were mostly vendors. We have minutes of this meeting.

All of Plaintiffs exhibits heretofore marked for identification are admitted in evidence.

The Plaintiffs rest their case.

ROBERT A. LAMSON, a witness on behalf of the Defendants testified as follows:

Direct Examination by Mr. Riskind.

My name is Robert A. Lamson. I am President of the Chicago Dairy College and Director of Dairy and Agricultural Bacteriology of Chicago Dairy College. I have the Decree of Bachelor of Science in Agriculture from the University of Wisconsin, and have done milk research work at the University of Wisconsin, Idaho, and Chicago.

I am familiar with pasteurizing methods. The milk is brought in from the country plants where it is received from the farmers and after it reaches the City plant, the milk is either pasteurized immediately or it is placed in a storage tank and cooled to keep the bacterial content of the milk at a low point. If it is pasteurized immediately, then it immediately starts through the period of heating, holding and cooling, heating to 144 degrees Fahrenheit, holding for a period of 30 minutes as a minimum and thereafter cooling it immediately to 50 degrees or lower. The milk is then automatically bottled and capped in a bottle filler, and conveyed into the cooling room until taken out for delivery to the customers. In the average plant, this process would probably take 5 to 6 to 7 hours.

386 Pasteurizing kills the disease producing bacteria known as the pathogenic bacteria and renders the milk safe. It also kills a very high percentage of the other type of bacteria, which causes the milk to keep longer. The average is 100,000 to 200,000 bacteria per cubic centimeter in raw milk. In pasteurized milk, it can not be sold if it exceeds 30,000. Whole milk may be raw milk or pasteurized milk. Milk must come into the City plant raw. Milk stays sweet longer after pasteurization. If milk is brought in from the State of Wisconsin and kept in a dairy plant in Chicago, ordinarily that milk can not be kept longer than 24 to 48 hours without it

spoiling beyond the practical limitations for successful pasteurizations. Milk must be put in final containers after it has been pasteurized. The container must be thoroughly cleaned and then immediately sterilized.

Mr. Seelig: At this time, if the Master please, I would like to make a motion that the entire testimony of Mr. Lamson be stricken physically from the record.

The Master: I will reserve the ruling on that.

Cross-Examination by Mr. Seelig.

The chemical constituents of the milk, such as butter fat and sugar are not appreciably altered by the process of pasteurization. The entire pasteurizing process is simply a process of raising the temperature of milk to a required point and holding it there for a certain period. There is nothing physically added or taken from the milk in pasteurizing. The milk is still whole milk after it is pasteurized. Pasteurizing takes from 30 to 45 minutes in a continuous system.

In most dairies in Chicago, the milk goes through a continuous system into an automatic bottler where each unit handles from 40 to 120 bottles per minute. About one hour intervenes from the time the milk is put into the pasteurizer until it is put into the final bottle.

The purpose of pasteurizing is to render the milk, safe with better keeping qualities, because of the inactivity and reduction in bacteria.

387 FRANK WAGNER, a witness for the Plaintiffs, recalled by the Defendants testified as follows:

My sister Mildred is married to Ralph Braden.

Defendants' Exhibit 1 and 2, being certified copies of Warranty Deeds of the Wagner Milk Plant in Richmond, Illinois, indicating title in Mildred Braden, are admitted in evidence.

Redirect Examination by Mr. Seelig.

The other day I testified that my father Josef Wagner, is the owner of the Richmond plant. That is the truth. My sister holds title for my father.

GUST PALMER, a witness on behalf of the Defendants, testified as follows:

Direct Examination by Mr. Riskind.

My name is Gust Palmer. I am the head of Belmont Farm Products. About five months ago, some one got into our dairy; broke our machinery with a sharp instrument. We caused the President and Secretary of the Uptown Dairy to be arrested. I did not charge any of the members of Local 753 with this offense. We had received threats from the Blue Ribbon Dairy.

I was an officer of the Lake View Dairy until the latter part of 1936. Seigfried Weiss was traffic manager. We had drivers, then receiving wages from $11.00 to $32.50. We also had vendors. I do not know how much they earned. Mr. Kost earned around $30.00 per week.

Cross-Examination by Mr. Seelig.

There was a hearing in Court arising out of the damage to our dairy and the parties brought in were discharged.

All of the references I made were to the Lake View Dairy. I was never associated with the Lake Valley Dairy. I do not know whether they have drivers or vendors, at this time. I do not know what salaries they pay.

The case between my dairy and the Complaint against the officials of the Uptown Dairy was a problem between those two dairies. It did not involve the Lake Valley
388 Dairy nor the Wagner Dairy, nor any other dairy.

During the year 1933, we filed complaint against the Milk Wagon Drivers Local 753.

GEORGE BEILFUSS, called as a witness on behalf of the Defendants, testified as follows:

Direct Examination by Mr. Riskind.

My name is George Beilfuss. I work for my father, who is a vendor selling dairy supplies of Belmont Farm Products. I was a vendor selling products of Lake Valley Dairy Products until July 31, 1937. I had the North Shore route and I did not have to start until approximately a quarter after six to six-thirty. I generally returned at between twelve and two. I made about $25.00 to $35.00 a week net.

I am a member of Amalgamated Dairy Workers Local 819, I attended a meeting of this Union. I was told by one of the other drivers that they were having a meeting for the purpose of forming the Union. No, I did not see any announcement on the Bulletin Board signed by the owners of the dairy requesting attendance at the Union Meeting. I do not remember the exact date of the meeting. There were 45 to 50 members present. Mr. Kost and Mr. Slotkin were there. They had a number of speakers.

Mr. Riskind; I am not shooting in the dark. I know what he told us.

* * * * * *

Witness: Can I have counsel?

Mr. Riskind: Can you have counsel?

* * * * * *

Q. Do you want to testify further? If you do not, I will excuse you.

A. No, because I feel that I have been made the goat here.

Cross-Examination by Mr. Seelig.

No, I have never seen you before (referring to Mr. Seelig). I have never discussed the matter of testifying in this case with any of the plaintiffs. I was subpoenaed here by Mr. Riskind. The President of Belmont Farms, Mr.
389 Gust Palmer took me to Fullerton Avenue and Halsted Street, at which time we were met by two of Mr. Riskind's men. They met Mr. Gust Palmer at that point and took me to Mr. Riskind's office. They paid the cab fare. They served me with a paper. At Mr. Riskind's office there was one other person besides him, his secretary and myself. At first I didn't have an attorney present at Mr. Riskind's office, but I made a complaint that I wanted a lawyer and my lawyer appeared. The only reason I went down to the office, was that Mr. Palmer told me it was going to be a Federal Investigation and I had better go down. When I went to Mr. Riskind's office, I thought it was in connection with a Federal Investigation.

THADEUS NIEMIRA, a witness on behalf of the Defendants testified as follows:

Direct Examination by Mr. Riskind.

My name is Thadeus Niemira. I am an attorney. I came to the office of David A. Riskind yesterday. My client Mr. Bielfuss was there at the time. The nature of this case was explained to me at the time I arrived.

GEORGE BIELFUSS, recalled as a witness on behalf of the Defendants, testified as follows:

Further Cross-Examination by Mr. Seelig.

It was at my request that Mr. Riskind phoned my attorney, because I refused to say anything else.

MORTON GERSTEIN, a witness on behalf of the Defendants testified as follows:

Direct Examination by Mr. Riskind.

My name is Morton Gerstein. I am employed by the Western-United Dairy and have been a member of the Milk Wagon Drivers Union Local 753 for five years. I receive $48.00 a week salary and commission.

I was never a vendor. Six years ago I was the owner of the Golden Dawn Dairy.

Cross-Examination by Mr. Seelig.

I am a retail route driver. I estimate the average number of points on a retail route to be about 200 points
390 a day. I deliver 1700 points a week. I make about 120 actual stops each day.

ALBERT HARRIS called as a witness on behalf of the Defendants, testified as follows:

Direct Examination by Mr. Riskind.

My name is Albert Harris. I have been a member of Milk Wagon Drivers Union Local 753 for three or four years and work for the Capital Dairy Company. My salary is $48.00 per week and commission. I worked as an employee of the Lake View Dairy. My last work for that Company was in 1935. When I first started in August, 1932, I worked for nothing. Then they gave me $5.00, then $10.00 and at the time I left I received a salary of $32.00. For a time I worked seven days a week, and then they gave me six days. The last year I received a vacation.

Cross-Examination by Mr. Seelig.

When I received the salary of $32.00 from Lake View Dairy, I was 22 years old. I had a little of both wholesale and retail business on my route. I am not a vendor at this time. My Company does not employ vendors.

Further Direct Examination by Mr. Riskind.

When I was with Lake View Dairy, the cashier was collecting $2.00 a week to join as a member of the Milk Wagon Drivers Union Local 753. When I found out they weren't going to become a part of Local 753, they refunded the money to me. I had no trouble getting my money back.

Cross-Examination by Mr. Seelig.

I do not know the reason why the Lake View Dairy affiliation with the Milk Wagon Drivers Union Local 753, did not go through. At that time the Lake View Dairy was selling cut rate milk.

JOSEPH SCHLEE, called as a witness on behalf of the Defendants, testified as follows:

Direct Examination by Mr. Riskind.

My name is Joseph Schlee. I am a member of the Milk Wagon Drivers Union Local 753. I was the owner of Lake View Dairy from the date they opened up in 1932 until
391 1933. We had drivers working for us. Their average salary was $15.00. They worked seven days a week and received no vacation. We had vendors. They made about $15.00 per week. I know the present condition of the Lake View vendors. They average about $25.00 per week. They work seven days a week and have helpers on their trucks. Their helpers are paid perhaps $2.00 per week. They are usually only about 14 to 15 year old boys. My wages are $48.00 per week and commissions amounting to about $20.00 a month. I work six days a week and receive a vacation of two weeks. I work for the International Dairy.

Cross-Examination by Mr. Seelig.

Yes, I am opposed to the selling of cut rate milk. To a certain extent, I am opposed to the vendor system of distribution.

I do not know the earnings of Nick Frost or Joe Igoe.

Q. You don't know anything about Lake Valley, do you?

A. I know they have been in business and I know who is connected with it and that is all.

* * * * * *

Q. * * * With the exception of Mr. Beilfuss you don't know the earnings of any vendors with the Lake Valley Dairy at this time, do you?

A. No sir, not vendors no.

Q. So that you have no idea as to what the average earnings of the vendors with the Lake Valley is at this time, do you, sir?

A. Not at this time, no sir.

I don't know any of the helpers on any of the Lake Valley routes. I don't even know whether they are paid by the Lake Valley or by the men themselves. I do not know the age of any helper working on any route at this time.

I was an officer and owner of the Lake View Dairy and during that time I had to withdraw my union card from Local 753.

I am not on good terms with Mr. Kaiser of the Lake Valley Dairy.

Redirect Examination by Mr. Riskind.

Q. * * * Now, to what extent are you opposed to the vendor system?

392 A. Well, provided they sell for the regular price, the way we do.

Q. Yes.

A. And not for 8½c as at the present time.

Q. Is that the extent you are opposed to it?

A. Yes, sir.

STEVE SCHOSTOK, a witness on behalf of the Defendants, testified as follows:

Direct Examination by Mr. Riskind.

I am a milk wagon driver for the Western-United Dairy. My salary is $48.00 per week and commissions which average about $32.00 to $34.00 per month. I work six days a

week and receive a two week vacation with pay. I am a member of the Milk Wagon Drivers Union Local 753. I was a vendor for the Meadowmoor Dairy, starting in 1932 and quit in 1935. I worked seven days a week and my net earnings were about $18.00 a week.

Cross-Examination by Mr. Seelig.

When I was a vendor at the Meadowmoor Dairy, my route was mostly a retail route. I had only about 140 or 160 points altogether, and I netted about $18.00 per week. No, I do not know how much a wholesale vendor would net if he carried from 1200 to 1500 points a day.

I distribute around 300 points a day for the Western-United at this time. My route is wholesale and retail. It takes me about 7½ hours. I make about 128 stops per day. On my route the average housewife takes 1 to 1½ points or bottles of milk daily.

I do not know the amount of earnings for the vendors of the Lake Valley Dairy.

I am opposed to the sale of cut rate milk in the City of Chicago.

I am opposed to the vendor system of distribution. Local 753 does not permit helpers on the routes. I do not know how many hours a vendor for the Lake Valley Dairy Company works or do I know how many days a week they work. No, I was not subpoenaed and I did not receive the subpoena fee for testifying.

Recross Examination by Mr. Seelig.

No, I do not know of any routes that carry as little as 140 points to-day.

393 JAMES CAVICO, a witness on behalf of the Defendants, testified as follows:

Direct Examination by Mr. Riskind.

I am a member of Milk Wagon Drivers Union Local 753. I am a route rider and receive $53.00 a week. I serve six routes each week on the days that the regular men are off. I was a vendor for the Golden Dawn Dairy until 1934. I worked seven days a week and my net earnings were $15.00. I started to work at 3:30 or 4:00 o'clock and quit about 2:00 o'clock in the afternoon.

Cross-Examination by Mr. Seelig.

I couldn't tell you if it takes longer to distribute from a retail route or from a wholesale route. I never worked on a wholesale route. The average number of points on a route at our dairy is about 300. Retail stops mostly take one point each. Some days I run 120 and some days 150 stops. It would take about four hours just to make these deliveries. Then you have to go back on the early stops to collect. No, I have no opinion as to the average number of stops in an hour. The longest route I run is about fifteen miles.

WALTER JOB, a witness on behalf of the Defendants testified as follows:

Direct Examination by Mr. Riskind.

I am a driver for the Western-United Dairy. I am a member of the Milk Wagon Drivers Union Local 753, and receive $48.00 a week salary and commissions amounting to about $20.00 a month. I work six days a week and receive a vacation of two weeks with pay. I was a vendor buying milk from the Reliable Dairy. I worked seven days a week and averaged $15.00.

Cross-Examination by Mr. Seelig.

The vendor route was partly retail and wholesale. I carried about 150 points. I made a profit of about five cents on each point. No, I have no opinion what the income would be if I had carried 1200 points daily. No, I don't know the number of points carried on a wholesale route of the Lake Valley Dairy at this time. My present route is retail and wholesale. I carry about 350 points. About 130 points are
retail. I make about 100 stops a day. I start at 5:30
394 in the morning and make my last delivery about 12:00
o'clock. In addition to delivering however, I have to revisit certain stops to make collections. In addition to the retail stops I have approximately 12 wholesale stops and a school stop. I make two trips daily to the school; one in the afternoon and one in the morning. The afternoon trip is made at a quarter to two and takes about a half hour. After I am through with the school stop, I have the rest of my route to finish. This takes about four hours.

AL ZELLER, a witness on behalf of the Defendants, testified as follows:

Direct Examination by Mr. Riskind

I am a member of the Milk Wagon Drivers Union Local 753, for the past four and one-half years. I receive $48.00 and commission. I work six days a week and receive a two week vacation with pay. I was a vendor for the Meadowmoor Dairy. The last time I was a vendor was four and one-half years ago. I earned $15.00 to $20.00 per week. I worked 7 days a week.

Cross-Examination by Mr. Seelig.

I am now employed by the Capital Dairy on a retail route. When I was a vendor for the Meadowmoor Dairy, I had a retail route. I also had some wholesale. It was in the very beginning of the Meadowmoor Dairy. I was one of the first trucks to pull out of the dairy. I was building up my route and I couldn't tell you how many points I was selling at that time. The price of milk changed four or five times. It was eleven, and then ten and nine cents and finally it dropped to eight cents, so that we weren't making any money. My total was 1800 to 2000 points wholesale and retail combined a week. I was selling a very small amount.

I don't know how many points is carried on a wholesale route of the Lake Valley Dairy. I am opposed to the sale of cut rate milk and to the vendor system.

Redirect Examination by Mr. Riskind.

I am opposed to the vendor system, because they go out several hours earlier than we do and of course the difference in price.

Q. Why are they able to undersell you?

A. Well, they are able to undersell because—I think
395 I had better drop that.

The cut rate dairies are able to undersell because they have no trucks and do not pay any wages and have no bottle loss.

Recross Examination by Mr. Seelig.

If four times the amount of milk were carried on a route, the cost of delivery would be approximately one-quarter as much per point.

Mr. Sellig: Isn't it true that the principal difference between the sale of cut rate milk in the City of Chicago and milk stops you distribute is in the cost of delivery?

Mr. Riskind: If you want me to stipulate to that, I will be glad to. We can stipulate to the cost of—.

HARRY WALD, a witness on behalf of the Defendants, testified as follows:

Direct Examination.

I am a picket for the milk wagon drivers union. I have been a member of that union about nine years. I was last employed as a milk wagon driver in 1929 by the Western Dairy. I was hired as a picket for the Union by Ray Bryant. He is business agent. When I was employed as a picket, Mr. John O'Connor, supervisor of the pickets instructed me to wear the banner and not to talk to anybody; just to walk up and down in front of the store. I receive $40.00 a week and work six days a week. I picketed a store at 4441 N. Kimball owned by a man named Bazik, about the middle of August 1937. We started to picket and after about a half hour Mr. Bazik came out and said he is going to go to the Bowman Dairy. After Bazik put their milk in there, we went away. We made no threats against the store keeper and did not talk to any customer or anyone else. On July 27, 1937, I visited the store at 2850 N. Troy Avenue, owned by Jessie Wilson, with my partner Charley Segale. I parked my car on the other side of the street and my partner went into the store. Then I noticed my partner coming out and the storekeeper had one of those lead pipes and he was poking it on his back, chasing him out of the store. We went back to the Union and told them what happened. We were later arrested on the complaint of Mr. Wilson and were represented in Court by Mr.
396 Riskind. About a month after we visited the store, we appeared in Court and Judge Caplan discharged the case. I picketed a number of stores; about five or six stores of the Lake Valley and Wagner Dairies. My conduct was to see those store keepers and ask them whether as a favor to the milk wagon drivers union they would not buy union milk. Some stores we gave twenty-four hours and some stores practically a week and then when we came back and found their milk still there, we started picketing the stores. We did not talk to any customers or drivers or molest any store keepers. We did not talk to all of the store keepers

before we picketed. We picket because there are several hundred union drivers thrown out of work because of the vendor system. Because the vendors work longer hours and draw less pay.

Cross-Examination by Mr. Seelig.

The Milk Wagon Drivers Union pays me for picketing. I do not attend any membership meetings of the Union and do not pay dues to the Union at this time. In the case of Mr. Bazik, I don't know whether anybody else from the Union did anything to induce him to change when Mr. Bazik came out and changed to Bowman Milk. In the incident between my partner Mr. Segale and Mr. Wilson concerning the store on North Troy Street, I was not in the store, didn't overhear any conversation that might have taken place, and don't know what actually took place. During the past year I have probably picketed about close to one hundred stores. I am a picket on one store and taken from that to another store. Some times I will picket a very short time at one store. We always have a partner when we picket. No, I have never seen any broken windows, stores that have had stench bombs thrown into them and have never seen any stores where physical violence has taken place and don't know of any physical violence having taken place at any milk store in the City of Chicago. I don't know anything about the price at all. I don't remember whether I have picketed any store that did not sell cut rate milk. I have no idea whether they sold milk at cut rate prices or at the same price as delivered milk. I do not know the price at which milk was sold at any store I picketed in the last year. I do not know how many cut rate stores there are in the City of Chicago and do not know how many cut rate milk stores there were in Chicago in 1933. I do not know whether there are more or less 397 cut rate milk stores now than then.

The last time I was on the wagon, I had a little over 230 points; almost 200 points were retail. I made about 140 actual stops a day to deliver this milk. I had only two wholesale stops of about 30 to 40 points. It took me about twenty minutes to make these two stops. It takes very much less time to distribute on a wholesale route than on a retail route. An average of from three to twenty cases go into a milk store. When I have been picketing in front of these cut rate milk stores, I have seen the patrons of the stores bring empty bottles back to them.

Further Direct Examination by Mr. Riskind.

I was sent by Mr. Bryant, to the Wagner Dairy on June 4, 1938. I got there at about a quarter after three in the morning. I parked my car about three doors away from their plant. I observed the first truck coming out of the plant at 4:15. The next one came out about five minutes later and I observed five trucks after that coming out, up until about six o'clock A. M. Then I went home and got back about 11:00 o'clock. I noticed the first truck coming in about 11:30. The last truck came in about a quarter to three or two-thirty.

Further Cross-Examination by Mr. Seelig.

During the time from six until eleven A. M. I don't know what took place at that dairy and don't know whether any of the trucks that went out earlier came back during that time. I would not recognize any of the drivers and don't know whether the trucks that returned had the same drivers as the trucks that went out in the morning. It is my opinion that they work long hours because I noticed drivers coming back making special deliveries.

BERNARD F. RICHARDS, a witness on behalf of the Defendants, testified as follows:

I am a member of the Milk Wagon Drivers Union since 1903. I will be 56 years old next Sunday. At present, I am a picket for the Union. I was last employed as a milk wagon driver in 1931 by Sidney Wanzer & Sons. I lost my position because the dairy took my wagon off, on account of the system of vendors that was just coming in at that time. They were going out early in the morning and working long hours and I could not compete with them.

398 Q. And as a result, you lost customers.

A. A cheaper commodity, and I lost the trade.

That is why they took the wagon off. I had worked for Sidney Wanzer and Sons for sixteen years.

I was employed as a picket for the Milk Wagon Drivers Union by Ray Bryant, one of the officials. I was told to do peaceful picketing at all times and to raise no disturbance; no intimidation, to speak to no one and told that if I didn't obey those orders, I would be discharged. I received $40.00 a week salary for picketing. I have picketed four or five

Wagner Stores and three of Lake View. In November of 1936, I was picketing the store at 1625 Spaulding. Mr. Wagner, Sr., the elderly gentleman, I imagine he is about sixty-five years or seventy year old came up in a Ford car across the street. Mr. Wagner got out and came over and told me and my partner Sam Mellankoff to get out of there and used pretty bad language. We told him we wouldn't so he produced a gun. I walked down to Ogden Avenue and called the police. I never made any threats to anybody, did not molest any customers and did not talk to any drivers delivering commodities. All I did was carry a banner and walk up and down in front of the store.

Q. Did you talk to any bread drivers or any other drivers delivering food commodities?

A. None at all, with the banner on, unless they wanted to get some information, but I never spoke with the banner on.

* * * * * *

Q. And do you know why you are picketing?

* * * * * *

A. On account of the vendor system, the cheap commodity of goods which makes it hard for anyone to get back on the wagon again in Local 753.

I visited a store at 56th Avenue and asked him if he would not deal with a Union Driver belonging to Local 753. Some times the store keepers would have a little argument that they had to sell cheaper goods to keep their trade, or whatever the case may be. If they didn't change, we would picket them.

Cross-Examination by Mr. Seelig.

399 The conversation with the storekeeper on 56th Avenue was about two and one-half years ago. I haven't talked with a store owner of Wagner or Lake View since that time. I have picketed about twenty-five to thirty cut rate stores in the last year. When we picketed we worked in pairs. I don't know how many pickets are employed by the Milk Wagon Drivers Union. They never have meetings of the pickets. Mr. O'Connor and Mr. Bryant are in charge of the pickets.

There may possibly have been other reasons that caused the Wanzer Dairy to take off my route. When I was referring to vendor competition, I was not referring to wholesale vendors, but of the retail vendors.

Yes, there was a great deal of unemployment in 1932. The difference between the retail price of delivered milk and cash and carry milk in the stores was about two cents

a quart. When I left the Wanzer Dairy, 320 points a day was the highest during the winter months and in the summer months it went down to 160. Our wage scale was $50.00 a week and commission at that time.

All of the picketing I have done during the past year has been done at locations selling cut rate milk. During the past five years I have seen cut rate milk stores with windows broken, stench bombs thrown, price signs torn down and other acts of physical violence.

I am opposed to the vendor system, because the hours are longer and it is a cheaper commodity. It is two or three cents cheaper. I would not be opposed to the vendor system if they belonged to the Union I belong to. I talked to one vendor for Lake Valley. I don't know his name. He said that he started at five o'clock in the morning and worked through until three or four and came back there as late as five-thirty with milk. At my peak season I distributed about 320 points, making between ninety and one hundred points. My average was about three and one-half points to a stop. My route was in Hyde Park and those people took more points than the average route. The average route takes about a point and one-half to a customer. I consider myself to be an average worker. I made about thirty to forty stops an hour.

Mr. Riskind: Yes, his route was exceptional.

Yes, I have seen plaintiffs' exhibit one. (Referring 400 to Union Sign of Amalgamated Dairy Workers Union).

I have seen the sign at the store at 2611 E. 87th Street, selling Lake Valley Milk. I am still picketing there.

Concerning the incident that took place at 1625 Spaulding Avenue in November 1926, I did not cause Josef Wagner to be arrested.

Redirect Examination by Mr. Riskind.

We pickets work in pairs, one has a banner on and another one rests an hour.

COLUMBUS STELLE, a witness on behalf of the Defendants, testified as follows:

Direct Examination by Mr. Riskind.

I am a member of the Milk Wagon Drivers Union Local 753, for eighteen years. I am employed by them as a picket. I was a driver for the Bowman Dairy for eighteen years. I lost my route on account of the competitive vendor system.

Before the vendor system started, I had about 290 points on my route in May 1930. I gradually lost a lot of the business and dropped to about 230 and I was taken off. The last time I worked as a driver was November 30, 1937. Some time in March 1938, I was employed as a picket. I was employed by Mr. John O'Connor, as a picket at $40.00 per week. He instructed us to peacefully picket and not molest anybody or we would be discharged. I picketed the Wagner Store at 163½ W. North Avenue. I did not talk to Mr. Moorhatch, the owner. I think we picketed three days and then the Union Driver came in and left milk and we went away.

Cross-Examination by Mr. Seelig.

At the time I was discharged from the Bowman Dairy, I had about 230 points on my route.

Q. Now, isn't it true that 230 points on a route is and was at that time a profitable route?

A. I do not know.

We get commission for carrying more than 191 points a day. I was carrying about forty more points than the requirements for commission. No, there was no special reason for my being discharged.

I don't recall any cut rate milk vendors in the City of Chicago in 1930. I am not acquainted with any of the wholesale vendors of the Lake Valley Dairy and do not know how many hours they work or how many points of milk they carry. I have not been on a wholesale route.

401 I had four or five grocery and drug stores on my route and in these stores I brought the milk in and put it in the ice box and took other things out. It took five, ten or fifteen minutes. I delivered to about 150 or 160 stops on my route. Yes, I delivered a little over one point per customer.

Yes, I am opposed to the sale of cut rate milk. I was present at Mr. Riskind's office, together with a couple of pickets, Mr. Bernard Richards and Harry Wald.

CHARLES SEGALE, a witness on behalf of the Defendants, testified as follows:

Direct Examination by Mr. Riskind.

I am a member of Milk Wagon Drivers Union, Local 753, for 20 years. I am engaged as a picket at this time. I was last employed as a Milk Wagon Driver about four and one-half years ago by the Bowman Dairy. I receive

$40.00 a week for picketing. I was hired by Mr. Bryant. He instructed us to walk up and down in front of the store and talk to nobody. When I lost my route I had about 300 bottles a day and took sick with pneumonia. When I got back, in about two months, my route was down to one-half. During that time there were vendors running through the route and through their long hours and earlier deliveries they got the business. I was unable to take my business back.

I have picketed two Wagner stores and about eight Lake Valley stores. I picketed the store at 936 E. 93rd Street and at the last the owner decided to make the change. We went in and saw the lady and asked her if she would as a favor buy from the Milk Wagon Drivers Union. We made no threats of any kind. My partner was Harry Wald. We did not molest any customers and did not stand in front of the store. About August 1937, I visited the store of Jessie Wilson, at 2850 N. Troy. I went into the store and there was a lady there. I represented myself from the Milk Wagon Drivers Union and asked the lady for a favor to the Milk Wagon Drivers, and the unemployed drivers if she wouldn't handle union milk. At that time Mr. Wilson walked in the door. He walked behind the counter and came out with a pipe and told me the State's Attorney and Police told him how to handle us hoodlums. He ordered me to get out of the store and I turned around and he hit me on the head with the pipe. There was a warrant sworn out by Mr.
402 Wilson and I appeared in Court. I was represented by Mr. Riskind. The case was dismissed. I have not committed any acts of violence in any of the stores that I have picketed and I made no threats against any persons whatsoever. I did not talk to any bread drivers or any other drivers of food commodities.

Cross-Examination by Mr. Seelig.

The Laychak store on 93rd Street discontinued purchasing from Lake Valley after we picketed for about ten days and took from Bowman Dairy. A lot of the delivery men delivering other commodities went in and out of the store after we commenced picketing. I have never seen a milk store at which violence has been committed. I have picketed seventy-five or more milk stores in the City of Chicago. I did not know the address of any store that I have picketed at any time that did not sell cut rate milk. If I were sent to do so, I would picket

a store even if the vendor delivering to the store worked shorter hours than members of Local 753 and made a larger net income.

When I talked about vendors competition on direct examination, I was referring to retail vendors and was not referring to cut rate milk stores.

Defendants Exhibit 3 (copy of Milk Wagon Drivers Form of Contract with dairies) admitted in evidence.

Defendants Exhibit 4 (copy of city ordinance concerning milk and milk products) admitted in evidence.

RAY BRYANT, a defendant testified as follows:

Direct Examination by Mr. Riskind.

I was born July 21, 1881. I am Trustee, business representative and a member of the Executive Board of the Milk Wagon Drivers Union Local 753. I have been identified with the milk craft since January 20, 1908. I was a milk wagon driver for the Bowman Dairy Company for two years, became a foreman in 1918 and then went to work for the Union full time. My duties at the present time are inside of the office. I am assistant Secretary and Treasurer and have charge of the pickets. I take care of grievances that come into the office and general work that comes in. I do not believe that I can state the time that I talked with any of the vendors of the Lake Valley or Wagner Dairy. Within the last year a man
403 came in who had been a vendor with the Lake View Dairy and wanted to go to work at a union dairy and wanted to know what objection we would have. We told him we would welcome him, if he could get a job with one of the dairies that had an agreement with us.

Witness: A. I am not going to falsify here, I can not remember what the man said.

I am acquainted with the vendor system. There are two types of vendors. They are known as wholesale and retail vendors. The retail vendor was the man that was attracted to the business in the early part of the depression. In come cases he was an ex-driver who had lost his position and there were certain dairies that set up equipment to furnish milk at a platform price. These retail vendors furnished their own trucks, assumed their own responsibility and bought milk. They sold the milk to whomever they could.

A few years later the wholesale vendor developed his method. They decided to put on stores and furnish them milk and gradually the retail vendors dropped out, more or less of the picture and these wholesale vendors came into effect. When the loads got a little heavy they operated in most cases with a helper. Most of the wagons are operated with two and some times three men.

The retail vendor works unusually long hours, seven days a week, no vacation and very low return.

The wholesale vendor does not work as long hours. He is working an average of about nine hours a day, I believe, basing that on an investigation I made last Saturday. The helpers are employed by the vendor. They are paid about $18.00 a week and work seven days. The helpers help the wholesale vendors out. I know of some instances where a wholesale vendor employs more than one man. The business increased in some instances and the vendor graduated from running the wagon and hired help to run it, and in some cases got another truck and he employs a driver and then a helper on these other trucks. The drivers I talked to got $30.00 a week and worked seven days.

According to our union, no delivery is supposed to be made before five-thirty and all off the streets by three o'clock P. M. The retail wage scale is $48.00 plus
404 commission. The wholesale driver receiving commissions gets $49.50 and the wholesale driver not receiving commission gets $52.50 a week for six days. He receives a vacation of two weeks with full pay. When our Union was organized, the men were required to work fifteen to eighteen hours a day and it was a gradual betterment up to that period where we succeeded in getting eight o'clock delivery in the morning and the men in and off the street at a reasonable time. In order to meet the competition of the vendor system, we found it was impossible to enforce the eight o'clock ruling, so we had to let the men go and start earlier in order to meet this unfair competition. The average wage of the retail vendor at this time is $17.00 or $18.00 per week. As to the wholesale vendor, it depends on the load. The average is three-fourths of a cent to a cent margin on a bottle. I think the net earnings of the wholesale vendor is far less than our scale. If he sells 2000 points a day, and makes three-fourths of a cent, there is only $15.00 there to play with. He has a little additional income from by-products which might bring it up to $20.00 a day. He has got to pay helpers, cost and maintenance of the truck

and gasoline and oil. I would not say it is over $30.00 a week on an average, because he is responsible for all credits and losses. We have not refused to take vendors into our Union, because they were selling milk cheaper than the prevailing price. We will take them in, providing they will show equivalent earnings and agree to work our hours. We have taken in between 100 and 200 in the last few years. The Wagner Dairy drivers are paid between $20.00 and $30.00 a week and I am told work seven days a week.

The Vendor System has had a very bad effect upon the milk wagon drivers union. In 1932 we had a membership of 7600. At the present time we have a membership of 5300. I will agree that maybe the depression has caused some of that, but the majority of it is caused by the competition from these vendors. We have sought to organize the vendors of the Wagner Dairy and Lake View Dairy along these lines. We decided there was only one thing to do and that was to organize them, in order to put them on a equal base, to see that they lived up to our
405 agreement in all ways. We had never refused to take any of these men into the Union, because they sold cheaper milk. We are not interested in the price that these men secure from the store keeper. We are opposing the method and system of distribution and not the price. About three or three and one-half years ago we commenced to place pickets at the stores selling milk delivered by men not belonging to Local 753. We put the pickets on and hoped that it would have an effect on the storekeepers, so that he would return to a Union Dairy. It was very successful.

Before April 25, 1938, we had about twelve men working picketing six stores a day. At the present time we have close to 140 pickets. We increased the number of pickets after May 1, 1938. For the past two or three years we have been hampered in picketing on account of a Court order which restrained us from picketing the outlets of one of the largest independent dealers in Chicago. That restriction was removed on April 25. About May 1, I started to put on the new men and have put on twenty-five to thirty a day until I got up to the present number. The stores of the Lake Valley and Wagner are not the only stores that are being picketed. The majority of the stores we are picketing are stores serviced by the Meadowmoor Dairy. We are picketing those stores because of complaints from our men that lost business to the Meadowmoor Dairy. In 1932 or 1933, I took in-

formation from twenty or thirty retail vendors. They said they were working from twelve to fifteen hours per day, seven days per week and they averaged $16.70 a week. The retail vendor has not benefited at all. The wholesale vendors I think now has improved, but not equal with members of 753. Our Union does not permit a helper on a truck. Our purpose is to have one man employed as a driver. Before the vendor system started, we did not have any men on relief. Afterward, we had up to 800. In the winter of 1932 we took a reduction in wages and to get our men back to work we entered into an agreement that there would be no new men hired. Our books were closed to any new men for about three years. We made an exception in the case of vendors who wanted to join and become drivers. We wanted to clear up the situation.

406 Q. Did they agree to the conditions of wages and hours when you took them in?

A. Certainly, they agreed to it. You understand, we took them in, of course, as drivers.

Our grievance is against Vendor System. It reduced our membership. I think there is only one dairy in the City of Chicago to my knowledge that is not selling cut rate milk, the Wanzer Dairy Company. About 120 dairies employ members of Local 753. About 119 of them sell cut rate milk. Officially, I do not know of any occasion when we have done anything to stop milk coming from another state.

I do not believe I ever met Siegfried Weiss until we met in here. I have knowledge as to the violence that has occurred against the cut rate stores. I have been called over to the State's Attorneys Office. I naturally read the papers and hear the talk. About the first of May, 1938, I saw an article in a newspaper where the Milk Wagon Drivers Union had been blamed for a truck being tipped over. I immediately called the State's attorney's office and found I could not contact the person I wanted to. I was over there on Saturday and we had about an hour's conversation. There was another truck tipped over. On the following Monday, we gathered again at the State's Attorney's Office and Mr. Roach and Mr. Parrillo and Mr. Schaub of the Meadowmoor Dairy were there. We pressed the necessity for investigation and particularly accused this other group of tipping over their own trucks to prejudice the public against us. During the time this injunction was in effect, I can recall no violence which took place against the Meadowmoor Dairy.

There always have been stores that sold milk less than others to make a leader out of it.

Q. Now, when you placed pickets in front of the stores that are being delivered by non-union drivers, did other drivers, going to that location, belonging to A. F. of L. stay out of the store?

A. In most instances.

Q. Will you tell the Court why they do that?

A. Practically all of the teamsters in the City of Chicago are affiliated with the International Brotherhood of Teamsters and Stablemen and there are very few do 407 not belong to the Chicago Truck Drivers Union and when they see this banner, in a store or anything else, they do not go through the picket line. It is a sister local and there is a kind of understanding.

When we hire pickets I tell them to do exactly what John O'Connor told them to do, to walk up and down all day with the banner and to talk to absolutely nobody. Some deliveries are being made, but the majority do not make deliveries, through there obligations. To my knowledge, the union officials have never authorized any violence. After the Meadowmoor Dairy injunction was dissolved there was an assessment levied against the members to put on a lot of pickets. At that time they were getting a $3.00 a week increase, and they said that they were perfectly willing to put it in an assessment. The assessment was approved at the regular meeting. I have known Frank Wagner for many years and have always been friendly with him. In August, 1933, I was not present when a mob held him up.

Cross-Examination by Mr. Seelig.

Mr. Steve Sumner is Secretary and Treasurer and a member of the Executive Board of the Milk Wagon Drivers Union. Robert Fitchie is President, business agent and a member of the Executive Board. Fred C. Dahms is recording Secretary and business agent and member of the Executive Board. Joseph L. Patterson is a Trustee and member of the Executive Board. Alvin F. Richards is a Trustee, business representative and member of the Executive Board. All of these men devote all of their time to union affairs. None of them are dairy workers. I have been a full time employee of the union since 1919 and have been assistant Secretary and Treasurer since 1928. Steve Sumner has been Secretary of the union since 1928. Robert Fitchie has been President

since 1909. Some years ago all those officers that were then officers were elected for life. Mr. Sumner, Fitchie, Patterson and myself are elected for life. Alvin Richards was the last man elected in 1930. The last time we had a general election of all of the officers in our union was about 1916. My salary is $9000.00 a year. I don't care to answer as to Mr. Sumner's salary. Mr. Dahms receives $9000.00 a year. There was a reduction made in all of our wages in 1932. Since then, there has been no change. I think Mr. Sumner received $11,000.00 a year during that time.

408 Other than our warden, who receives $50.00 a month, there are no milk wagon drivers who are Officials of our union.

Defendants Exhibit 3, being form of Union Contract with dairies applies only to employees of dairies, and the word "Vendor" does not appear anywhere in the form. The amount of milk distributed by retail vendors in Chicago is very small. It is a negligible amount. One Lake Valley driver came to my office and talked with me as to his desire to work as a union driver. I told him that if he got a job as a driver, I would give him membership. I don't know whether the vendors buy or sell for cash, I do not know any vendors for Lake Valley that sells on credit. The average number of points on a route employing members of our union is about 260 to 270. Practically all of these routes include some wholesale stops. Between 1600 and 1700 of our drivers are employed by the Bowman Dairy at this time. About 1400 to 1500 are employed by Borden-Wieland. About 350 by Wanzer Dairy. About 140 by Capital Dairy. About 200 by Western-United Dairy. That totals about 4000. Our total membership at this time is 5300. The balance of our members are employed by more than 100 smaller dairies. When I refer to cut rate dairies, I refer to those dairies that sell all or practically all of their products at a cut rate price. I do not consider Borden-Wieland a cut rate dairy. They sell milk in the majority of their stores for one cent less than they deliver on their route. Bowman Dairy the same. I do not know of any Borden-Wieland or Bowman Dairy stores selling milk for eight and one-half cents.

Q. And how many of those stops can a man make on a route, where he has to run up and down stairs, on the average three story building or less?

A. Well, I would hate to have to make more than 35 to forty. The cost of running a truck is about $3.00 a day. On a retail route of 200 points figuring a $48.00 wage scale

for six days, the cost of distribution would be in excess of five cents a point. If a vendor purchases his milk from the Lake Valley Dairy and distributes on the average of ten cases at twelve stops each day, making a total of about 1200 points of milk, if he were collecting each day and the store keeper would pay him as soon as he was through,
409 it would not take more than twenty minutes to a stop.

But, we find that when a storekeeper has a customer, the driver has to wait until he is through and you can not get out as fast.

I do not know of any vendor route of the Lake Valley Dairy that has two helpers on it. I do not know at what price vendors of the Lake Valley Dairy purchase their milk and I don't know on what margin of profit they work. If a vendor's margin of profit were one and one-half cents instead of three-quarters of a cent, his income would change proportionately.

The cut rate stores started in the City of Chicago in the summer of 1933. When they started in, they popped up all over. I think the figure is closer to 1700 stores than 3000 stores.

The independent dairies selling cut rate milk employ a total of 283 men selling such milk, including vendors distributing their products, according to the figures I just gave you. There has been no picketing at any store selling Borden, Bowman or Wanzer milk.

The per capita consumption of bottle milk has decreased in the past six years. My opinion is that price makes very little difference in the amount of milk purchased by the general public in the city of Chicago.

The amount of picketing that has taken place has increased a great deal since about the 1st of May.

The Vendors that I referred to on direct examination in connection with the hearing in Washington in 1933 were not from either the Lake Valley or Wagner Dairies. The Lake Valley was not here then. It is a long time ago, but I think most of the vendors were with the Golden Dawn Dairy, which is not in business now. Conditions have improved as to the average wholesale vendor as against 1932 or 1933. In our union working conditions have improved over a long period of years. Working conditions generally have improved in almost every craft during that time.

Q. You refer to the fact that vendors were taken in by your Union. They were taken in as drivers, were they not?

A. Yes.

410 In 1917 a three year agreement was signed with a wage scale of $21.00. There was a shortage of labor and by 1920 we were receiving $26.00.

If a driver on one of our routes were to sell milk at less than the established price, there would be a shortage for which he would be responsible unless the dairy took up this shortage. I think most of our men maintain the established price.

We have no members of the negro race in our Union.

I prepared plaintiff's Exhibit 8 for identification. (Printed circular). We distributed about 500,000 of these circulars and I think it has been mailed through the United States mail. The other members of our Executive Board are familiar with this circular. We are not and have not at any time picketed the pasteurizing plant of the Lake Valley Dairy or Wagner Dairy. No members of Local 753 are employed on the Lake Valley Dairy or Wagner Dairy. I never discussed the preparation of an Answer in this case. I never seen the same and do not know whether the same has been filed. Our union is a craft union, accepting milk wagon drivers as members. We do not accept inside workers. Our pickets not only picket at stores where one of our drivers had previously served, but also picket other stores.

Yes, I was present near the Ogden Dairy at one time when we were organizing it. There were a group of other men there and I saw Frank Wagner and there was a truck there. I did not examine the contents of the truck. This incident took place in 1925 and not in 1933. I could not tell you the name of any of the vendors of the Golden Dawn Dairy. In 1931, there were a large number of retail vendors in Chicago.

Re-direct Examination by Mr. Riskind.

I have had experience in the labor movement since 1908. I have never drawn up a wage contract where the wages are to be settled or fixed in the future; nor where the employer is also a member of the union. Mr. Robert G. Fitchie drove a milk wagon from 1884 until he was elected President of the union in 1909. Mr. Steve Sumner was a milk wagon driver from about 1881 until 1902 or 1903. Mr. Fred C. Dahms, Alvin C. Richards and Joseph Patterson, James C. Kennedy, also drive milk wagons until they became officials of the Union.

Re-cross Examination by Mr. Seelig.

No, we would not deny membership to a man who was a milk wagon driver simply because his father owned a dairy.

Yes, it is true that our Union arrived at its present wage scale agreement in conference with the Associated Milk Dealers.

Offer of proof by Mr. Riskind that Mr. John O'Connor is a member of the Milk Wagon Drivers Union Local 753 and is supervisor of the pickets and that he would testify that he did not make the threats that have been referred to in the Plaintiff's case.

STEVE C. SUMNER, a witness on behalf of the Defendants, testified as follows:

Direct Examination by Mr. Riskind.

My name is Steve C. Sumner. I am 86 years old. I have been a member of Local 753 nearly 36 years. I am Secretary and Treasurer of the Union and was one of the original organizers in 1902. It was organized after a strike of the Teamsters. Before that time, wages were about 12.00 a week and a little commission. At the end of one year, they advanced $1.00 and at the end of the second year another dollar. Conditions were very bad and men worked all hours. A lot of the men left home before daylight and didn't get home until after dark. We had our first meeting December 13, and on January 13, we went out at 8:00 o'clock and came in at 5:00. Our wages were not bettered until 1905. We got an increase of $4.00 per week, until we finally got it up to $21.00. It was along in the twenty's that we got a six day week and a two week vacation.

I have held my present position since 1928.

My duties are taking care of the regular local secretarial work, looking after the sick, if a man and his wife get in trouble, I go and try to make peace among them, and look after the funerals. I am outside most of the time. I fix lots of complaints of men belonging to 753.

The worst offender of the Vendor System is the Meadowmoor Dairy.

Mr. Seelig: That is something new to me. However, the Meadowmoor started years ago, and has nothing to do with this case.

Master: I don't see that it is, but that in order that we may have a complete record, counsel disagrees with me, in order to have a complete record before the Court, I
412 will let him briefly state what he knows about it.

Concerning the Meadowmoor, Frank Diamond, the

brother-in-law of Capone and Murray Humphries came over to my office in 1932 and said they were going to show us how to make money and proposed to start the Meadowmoor Dairy. Murray said we know you get a lot of money from the big dealers, and I said that we have never taken a penny. He did a lot of talking about violence and forcing the other dealers and a short time later, he called up and wanted to meet us. Before he came in, Allman and Shoemaker sent over several officers to protect us and they found out that they had been there and they never showed up.

I talked to Murray Humphries many times while he was in the Meadowmoor Dairy.

I can only report the same story as Mr. Bryant has to the Vendor System and I would testify exactly the same concerning the wages and hours of our men. The Union has never attempted to fix the price of milk in Chicago and has never sat in any conference with the Milk Dealers where the price of milk was fixed.

I have known Frank Wagner since he was a child and I talked to him many times. Personally I have no knowledge as to what their drivers are paid. The last time I talked to Frank Wagner was in February 1938, at their dairy. I got a telephone call from Frank and I was over at the Brown Dairy at Summit. He said it was very important and I went over to the Wagner Dairy. I think Frank's sister was present. He told me about the smaller dealers starting an organization. I was there about two hours and it was pretty hard to tell you all that was said. I said that we wanted their men in the union and wanted him to pay the scale and live up to the hours of delivery. Frank Wagner said we can't go along on all of your propositions. And he said we have to have helpers on our routes. We talked about other dealers and he said they will all do as I do and I will help you get in the others. I told him that I was not in any position to make any other contracts with them and suggested that he call up Mr. Bryant. Frank called up Mr. Bryant and said he wanted to get into the Union. I wouldn't say whether there was a C. I. O. Union at that time, but he said they wanted to form a Union. I asked Frank to do me a favor to take a fellow out of Summit that had started in business there. Frank and I never discussed the price of milk. I never refused to take the Wagner Dairy men into the Union, because they sold at cut rate prices.

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Q. Have you ever sought to organize the Lake Valley Dairy?

A. Nor with that set up. I have never been out there.

Q. Did you attempt to organize Lake View Dairy?

A. Yes.

* * * * * *

Mr. Seelig: I object to that. They are not a party to this suit.

* * * * * *

Witness: A. I want you to understand that when I say with that set-up, I didn't mean you fellows here. I have never seen anybody connected with the Lake Valley Dairy. At one time the Lake View collected $2.00 a week from the men to get in our Union, and then they didn't get in, they got their money back. They never were members of our Union. All of the dairies, except Wanzer sell cut rate milk. We are fighting the conditions of employment.

I never knew Frank Wagner to be held up in front of the Ogden Dairy in August 1932 or 1933.

My testimony would be the same as Mr. Bryant's as to the number of members in our Union before the present vendor system and at the present time, and as to the effect of the vendor system upon our members. Our Union has never authorized any violence of any kind. We have instructed them at all times to obey the law and not to commit violence. There have been two occasions when the price of milk went down and the wages of our men went up. Mr. Bryant controls the picketing.

Cross-Examination by Mr. Seelig.

I have been an officer of the Defendant Union since 1902. I have not been a milk wagon driver since that time. I am opposed to any Union that is affiliated with the Committee for Industrial Organization. Our union is a craft union and only accepts as members, milk wagon drivers. We
414 do not take inside workers in our union of office employees. It is true that approximately 3750 of our 5300 members are employed by Bowman, Borden-Wieland, Wanzer, Western-United and Capital. We organized in 1902 and the wages of the men were not bettered until April 1, 1905, and somewhere in the twenty's we arrived at a six day week and secured vacations for our members.

It has taken considerable time to reach our present basis. I consider it dual organization if there is already one labor organization in a city and I would criticize any

such labor organization that entered into an agreement to arrive at wages and conditions of employment by voluntary agreement or by arbitration if voluntary agreement fails.

There were vendors in the City of Chicago prior to the organization of the Meadowmoor Dairy. We used to call them peddlers. Originally there were 1400 dealers that pasteurized and distributed their milk. Then a lot of these small dealers went together and sold their milk to others that had only one or two wagons and these others quit bottling. We had that a long time.

I do not know of any connection between the Lake Valley Dairy or the Wagner Dairy or its officers with the Meadowmoor Dairy at any time.

RAY BRYANT, recalled as a witness for the Defendants, testified as follows

Redirect Examination by Mr. Riskind.

Concerning Plaintiff's Exhibit 8 (printed circular), last fall at the Convention of the State Federation of Labor a resolution was passed that we ought to publicize the trouble that the milk wagon drivers were having in Chicago. We found that a lot of union men affiliated with the American Federation of Labor were purchasing milk from non-union drivers at the so called cut-rate stands not only in the City, but on the outskirts of the City. I consulted with an advertising house and prepared this pamphlet and distributed about 500,000 to the union people in the City of Chicago; to the members of the C. I. O. as well. We got cooperation from them.

Recross Examination by Mr. Seelig.

I took photographs of milk stands which appear on
415 this circular. Two of these stands pictured are in the City of Chicago. I have no knowledge that either Lake Valley or Wagner Dairy sells any milk in bulk to cut-rate stations.

Redirect Examination by Mr. Riskind.

At the same time that Mr. Sumner was supposed to have had his talk with Frank Wagner in February or March 1938, I had a short telephone conversation with

him and he talked to me as though he could help us if we took him in, in going after those bulk stands on the outskirts of the City, so for that reason I think he was prepared to come into that business.

Recross Examination by Mr. Seelig.

Frank Wagner said he was opposed to these bulk stands. I said he could help us.

The name of Lake Valley and Wagner Dairy both appear on this circular, because the circular applies to cut rate stands in the City of Chicago, as well as bulk stands in the outskirts of the City.

By agreement Plaintiff's Exhibit 8, being circular prepared and distributed by Milk Wagon Drivers Union is admitted in evidence.

STEVE SUMNER, recalled as a witness for the Defendants, testified as follows:

Further Cross-Examination by Mr. Seelig.

No, I have not read the answer filed in this case in my behalf. I have not read the answer, do not know its contents and it was never specifically discussed with me.

To my knowledge, there had been vendors or peddlers in Chicago since 1880.

The initiation fee of our Union is $100.00. The monthly dues are $6.00. At this time, the members of our Union are also paying a weekly assessment of $1.50.

Yes, I was present together with a group of other men at or near the Ogden Dairy plant when Frank Wagner was stopped with a tank load of milk. It was in April 1925. I am absolutely certain of the date. I heard Mr. Bryant testify the other day and my answers would be the same as his as to the officers, members of the executive Committee, salary of officers, length of time in office 416 and when these officers were elected, if I were asked the same question. My answers would be the same as Mr. Bryant as to cut-rate sales, the number of points carried on average retail routes and the length of time required to distribute.

Redirect Examination by Mr. Riskind.

Of the initiation and dues, better than $4.00 of that goes to sick and death benefits. On the occasion with Frank Wagner in 1925, there were no guns used that I know of.

Recross Examination by Mr. Seelig.

There was only one such incident at the Ogden Dairy. No this did not take place in 1933.

MABEL BRUCE, a witness in rebuttal on behalf of the Plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

I own a confectionery and light grocery business at 1625 S. Spaulding. In the fall of 1936, my store was picketed by two men from Local 753. The pickets were stopping customers from coming in and talking to them and we called up the Wagner Dairy. The old gentleman, Josef Wagner, came over to the store; there were two young men with him. Mr. Wagner went outside in front of the store and talked to the pickets. He just talked to them and told them not to bother us. I did not see Mr. Wagner display a weapon or a gun. I did not see any gun. The pickets got in the car and drove up to the corner. About an hour later the pickets came back. At two o'clock the next morning our window was broken. We called the police. About two weeks later we discontinued the sale of Wagner Milk.

Cross-Examination by Mr. Riskind.

I did not see Mr. Wagner strike anyone or see either of the men with him strike anyone. While Mr. Wagner was talking to the pickets, the two men with him were sitting in the car. I don't think they left the car. They were parked right near the store and they had nothing in their hands. Mr. Wagner just told them to stop bothering the customers. The pickets went to the corner.

Redirect Examination by Mr. Seelig.

The pickets came back in about an hour and continued to picket until the time was up.

417 JOSEPH KORDA, a witness in rebuttal on behalf of the Plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

I peddle milk for myself and I work in the Wagner Dairy. I am 25 years old. In August 1933, I was present near the Ogden Dairy in Chicago. I was in the Wagner Dairy office and Frank Wagner pulled up in a machine with two other men. Josef Wagner and Mr. Braden, Mr. Wagner's son-in-law, were present. Frank Wagner phoned the police station and the State's Attorney's Office in my presence. I drove to the Ogden Dairy with Frank Wagner, Mr. Braden and Josef Wagner. Frank's truck was parked on Ogden Avenue. It was a big truck that brings in milk from the Country. There were between 50 and 100 persons around Frank's truck. Josef Wagner got out and asked Mr. Sumner where the men were that held up Frank. Mr. Sumner said, "Frank is all right. There is nothing to it." There was some discussion about $125.00 initiation fee for Frank and Frank claimed he only had $10.00. Then Frank came back and said that we could go and that he had given Mr. Bryant $10.00.

I have been working for Wagner Dairy between 7 and 8 years, but when I distribute milk, I buy it outright from the dairy and do that for myself. I was not employed by the Wagner Dairy in 1925. I was twelve years old in 1925.

In the fall of 1936, I was at the office of the Wagner Dairy when a telephone call came in and I drove to 1625 S. Spaulding Avenue with Mr. Braden and Josef Wagner. There were two men there sitting in the car. Mr. Wagner asked them to show him their union card. One of the fellows jumped up and ran to Ogden Avenue. We got back in the car and went back to the dairy. There was no display of firearms and no fighting.

Cross-Examination by Mr. Riskind.

I was born December 10, 1913. I was married in 1935 at the age of twenty-two. I am certain that I did not work for the Wagner Dairy prior to 1930. I do inside work in the dairy and receive $21.00 a week. Once in a while I work seven days a week.

The vendor work of selling milk takes only about two

hours. I have only about 140 points. I have a boy working with me on the route. He is seventeen years old and I give him $4.00 a week and four quarts of milk a
418 day. He works for me nearly every day. He only works two hours a day. Yesterday Frank Wagner told me that I would be required to testify as to what happened at the Ogden Dairy. He just told me to tell what happened and he did not mention my age at all. I am not positive, but I think there are two men that take milk from the Wagner Dairy to the stores. I have never helped load any vendor trucks. I make about $21.00 or $22.00 a week clear after I pay my helper, as a vendor. I was introduced to Mr. Sumner at the Wagner Dairy about six years ago and have seen him four or five times since. I was present in front of the Ogden Dairy about twenty minutes. The call to the State's Attorney's office was in the presence of Ralph Braden, Josef Wagner, Evelyn Wagner and myself. Frank asked for the State's attorney. He called the Lawndale Police Station first. I first heard of the Plaintiff Union when I joined it, the first week in May. Frank Wagner is a member. I don't know when he joined. I never talked to him about joining it.

I do not regard Mr. Frank Wagner as my employer. He does not pay me. He does not give me orders. Mr. Josef Wagner pays me. I drive Mr. Josef Wagner in his car quite a bit. I like to chauffeur. I only work about four or five hours a day.

The two men at 1625 S. Spaulding Avenue were walking up and down in front of the store picketing. There was one banner from Local 753 that one of the men had. One rolled it up and the two of them went into the car. Josef Wagner made no threats and I am positive that he did not pull a gun. I have never seen Mr. Wagner with a gun. Inside the dairy there is a gun lying in the drawer. After the one man ran to the corner, Mr. Wagner went in and talked to the woman in the store and they came out and we left. The second fellow stayed in the car all this time.

Redirect Examination by Mr. Seelig.

I am sort of a handy man around the Wagner Dairy and do all types of odd work. My total net income is about $40.00 or $42.00 a week. I average about 8 hours a day. My helper works two hours a day. He only works on the route. I pay him, and he has nothing to do with the dairy. I think that the occurrence at the Ogden Dairy

took place in 1931, 1932 or 1933 because it happened about a year after I started working there, and I fix it in general reference to the time I started to work there. The
419 Wagner Dairy has no body guards and I have never seen anybody carrying any fire arms at the dairy.

CHESTER HALL, a witness in rebuttal on behalf of the Plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

We have a store at 2450 W. 59th Street. We handle Lake Valley Milk and a full line of groceries. I have never discussed this case with anyone. We started this business in April 1935. The first day we opened the business, Mr. O'Connor, who is a representative of the Union came in and told us that we would have trouble if we continued to handle Lake Valley Milk, which is a cut rate dairy and doesn't have any connection with his Union. We continued to handle the milk and they broke our windows about a week later. Two bricks were thrown through the large plate glass windows at night. The police came and questioned us and this Mr. O'Connor was picked up shortly after that and I identified him. The police captain, I believe took out a questionnaire and questioned me fully about the threats that were made. Our windows were put in and they were broken again, Mr. O'Connor paid us another visit, and we lived in constant fear.

Cross-Examination by Mr. Riskind.

Mr. O'Connor was held on suspicion. No one was arrested for specifically breaking these windows. Just recently there was a window broken and two men were arrested. One of the fellows worked for the United States Government.

I did not appear in Court against Mr. O'Connor. Mr. Weiss told me to come as a witness. I am twenty-two years old and have helped my mother in the store when Mr. O'Connor made these threats.

DAVID A. RISKIND, called as an adverse witness by the Plaintiffs in rebuttal, testified as follows:

Cross-Examination by Mr. Seelig.

I am an attorney at law. My office is at 134 N. La Salle St., and I am the attorney for the Defendants in this case. I affixed my signature to the answer filed in this cause. I was present in October 1934, at the Felony Branch of the Municipal Court in the case of People against Edward Spitzer, Michael Cox, and others. I represented the 420 defendants. They are all members of the Milk Wagon Drivers Union 753. Steve Sumner was present at several of the hearings and Fred C. Dahms, I think was present at one or two of them. Restitution was made to Mr. Gust Palmer of the Lake View Dairy in the amount of $1125.00 for the destruction of a milk truck. There was a farmer's milk strike. The farmers belonging to the Pure Milk Association were not satisfied with the price and went on strike and no milk was delivered in Chicago, except by those who were able to get it into Chicago by their own means. All of the members of 753 who reported for work were told to go home, because they had no milk to serve. I was with them in front of the Bowman Dairy and Mr. Ray Bryant told them to go home, but they made objections to the vendors sneaking in milk. It was merely a farmer's strike and yet some of our men lost their heads. Some of them went to a tavern and got quite drunk and committed acts of violence. They appeared in Court and admitted that they lost their heads. The Union agreed to pay these damages that had been sustained by the vendors. I appeared in Court on behalf of union members charged with violence only in 1934 during the farmers strike. I have appeared in Court where pickets or men have been charged with violence and I had them discharged.

FRANK WAGNER, a witness in rebuttal on behalf of the Plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

The pasteurizing at our plant is done in a continuous process system. At the conversation which took place a couple of months ago with Mr. Sumner at our dairy, my sister was present. Steve Sumner called up and asked if I would be in the office. He was in Argo. In about a half

hour he came in and asked if we had a store up there in Summit, Argo. He said that the Brown Dairy is right next door there and there is Borden and Bowman and it would help if we could get rid of that store. I told him that the store did not belong to us, but I thought the owner would sell it for about $400.00. Then he said, "Won't you join our organization?" I told him that we have helpers on our trucks and sell milk for two cents cheaper a quart in the stores, and that if we joined their Union, we could not have helpers and would have to sell our milk at a price, and go along with the others. That is all that we said, and then he said he would like to have me give up the store
421 in Argo, because it was hurting Brown and Borden and Bowman because the store was selling milk two cents cheaper than wagon delivery. There was no reference to any C. I. O. Union.

We have only one retail vendor route at our dairy. This route is run by Joseph Korda. He averages about 130 to 140 points, including cream. 99% of our business is wholesale. The man Ludwig, that Korda mentioned is a retail driver for the Dairy. The routes of Korda and Ludwig combined are less than 1% of our business. Joseph Korda pays the helper who works for him. He picks him up about six o'clock and leaves him off about 7:30. The boy goes to school at this time.

In my opinion violence makes it unable for us to hold the stores. We lose a very big margin of our business this way. I base this opinion upon stores that we have lost, that have had windows broken, stench bombs thrown into the place and that couldn't get their deliveries.

"Mr. Riskind: If the Court please, all this testimony was offered before on direct examination and I am asking that it be stricken.

The Master: Yes, strike it out.

Mr. Seelig: Q. I am simply asking—

Mr. Riskind: Don't make that statement on rebuttal, saying the same things over and over again.

The Master: I do not think it requires much evidence to determine what effect violence would have on the business of a place."

Our dairy is not and never has been connected with the Meadowmoor Dairy. Our dairy has been owned by my father and operated under his personal name for twenty-five years.

Cross-Examination by Mr. Brussell.

With reference to the meeting at our plant in February 1938, Mr. Sumner phoned us and said that he wanted to come out and see me. I phoned Mr. Ray Bryant while Steve Sumner was present. There are three stores that pick up milk at our dairy. They are owned by Mr. Williams and Mr. Krist. They also have their own trucks and deliver milk to their stores. They are members of the Plaintiff Union. Joseph Korda is the only retail vendor we have. We have no financial interest in the stores that pick up milk at our plant. I had talked to the owner of the store in Summit or Argo about selling the store for $400.00 before I said that to Mr. Sumner. I talked to
422 this man every day in the week. His name is Eddy Schroeder. I had no knowledge of the plaintiff union at the time Mr. Sumner spoke to me. Mr. Sumner at no time has spoken to me concerning that Union.

Mr. Korda is a retail milk man at this time. One afternoon I came from this hearing and told him he would have to testify. Last Saturday Mr. Korda went down to Mr. Seelig's office. He had never seen Mr. Seelig before that time. I was present at the conversation. Korda was asked what he knew about the Spaulding store. I did not talk to Korda about the Ogden Avenue accident after he spoke to Mr. Seelig last Saturday.

When Mr. Sumner came to our dairy in February no labor organization was mentioned. We had never even heard of one.

Redirect Examination by Mr. Seelig.

The Mr. Brown that leased the store that Schroeder had in Argo, is from the Brown Dairy, which dairy employes drivers of Local 753. Yes, my sister and brother-in-law, were also in Mr. Seelig's office last Saturday before the hearing and we all talked it over again.

RALPH E. BRADEN, a witness in rebuttal on behalf of the Plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

I live at Lake Geneva, Wisconsin. I am a son-in-law of Josef Wagner, Sr. the owner of Wagner Dairy Products. I am manager of the milk plant located at Richmond, Illinois.

In the summer or early fall of 1936, I was in the office of the Wagner Dairy. The owner of this store called and said they had picket trouble I went over alone the first time and asked him who sent him there. He would not give me any information. I thought another dairy had sent him. I left and around noon, he called again and said that there was a fight going on there. Mr. Korda drove Mr. Wagner and me to the store. We went into the store and were told that the pickets had been fighting and talking to customers. One of the pickets got out and came around behind the car and talked to me, and Mr. Wagner walked up to the car, to the other man and asked to see his Union card. As he walked up to the car, this other fellow jumped out and ran down the street. There
423 was no fight involving any of us, and no fire arms were displayed by anyone. I have seen the type of banner carried by the pickets of Local 753. I am not a sign painter and have never painted a sign in my life. I was employed as a cartoonist by the Mid-West Features Syndicate in 1933 and 1934.

Late in the summer of 1932 or 1933, I was present near the Ogden Dairy, when a tank truck of milk driven by Frank Wagner was detained there. I fixed that date in my mind, because I didn't know the Wagner family before 1931. I married the Wagner girl June 1, 1931. I was at the plant and went over there with Mr. Wagner, Sr. Mr. Wagner talked to Steve Sumner and wanted to know why they were holding this truck and where these men were that had drawn guns. Mr. Sumner said "This thing can be fixed up all right". He told Mr. Sumner that Frank only had $10.00 and couldn't raise the $125.00. There was another man there who was unknown to me at the time.

Cross-Examination by Mr. Riskind.

Mr. Josef Wagner, Sr. owns the plant at Richmond. The title of that plant is in my wife's name at this time. This was done some time last summer. I became manager of the Richmond plant the day we opened November 11, 1937. Before that time I was at the Wagner Dairy in Cicero from October 1935. I had charge of the retail stores. I know an attorney by the name of Kanak. No, Frank Wagner and I did not confer with Mr. Kanak about painting a sign with the words "Milk Wagon Drivers Union, Local 753." I am not a sign painter. I never painted a sign. I do not recall any storekeeper on West Chicago Avenue in 1926 that threatened to quit the Wagner Dairy. I first heard about

this case when I was called on the telehpone by Frank Wagner and asked if I could come in and testify. About 8:30 Saturday morning I drove down to Mr. Seelig's office with my sister-in-law. I was told that I would probably be asked about the Spaulding store and the Ogden Dairy matters. I have not been told what was testified to concerning these matters.

On numerous times Frank Wagner and I might have spoken about the Ogden Avenue accident. I was with him practically every day. After we visited the Ogden Dairy, Mr. Josef Wagner, went back to the Wagner Dairy. I wasn't working for the Wagner Dairy at that time. I
424 was in the automobile finance business and just happened to be there. I had been in the neighborhood on business. I was going out to Maywood. Frank Wagner came in and told us that something had happened at the Ogden. Mr. Korda drove the car and I went along with Mr. Wagner. I knew Mr. Sumner, he is a pretty famous man. I had seen his picture in the papers many time before that. When we got to the Ogden Dairy we saw a mob between 50 and 100 men. I am positive that Mr. Wagner did not have a gun with him. I have never seen Mr. Wagner carry a gun. I have never seen Mr. Wagner, sr. nor Frank Wagner handle the gun kept in the office of the dairy. We stayed at Ogden Avenue about twenty minutes. I got out of the car with Mr. Wagner. I didn't pay any particular attention to just where Korda stayed. Nobody has refreshed my recollection concerning this story.

Redirect Examination by Mr. Seelig.

On the day of the accident at the Ogden Dairy, I heard Frank Wagner phone the State's Attorneys Office. He phoned at my suggestion. He told them just what had happened, that two men had held him up.

I visited the Spaulding store the next morning after the episode I stated. There had been a couple of bricks and a stench bomb thrown in through the windows. I observed the odor about the place and the broken windows and the stench bomb.

Recross Examination by Mr. Riskind.

No, I never saw Mr. Seelig before. We stayed at the Wagner Dairy before we left for the Ogden Dairy long enough for Frank to call the State's attorneys office and the Lawndale Police Station. Frank did the calling. We have

extension phones there. We don't have a switchboard. I don't remember what number he called. He mentioned no name on the phone. Immediately after that he called the Lawndale Police Station. I don't know who he talked to there. When I visited Mr. Seelig's office, I told him that I remembered these incidents. I had no chance to discuss that with Mr. Frank Wagner before I visited Mr. Seelig's office. I had only been at the Wagner Dairy about five minutes before going down to Mr. Seelig's office. I made arrangements for Evelyn Wagner to ride downtown with me.

I didn't say anything to her about this case. She did
425 not tell me what she was going to testify to.

Offer of proof concerning Robert D. Lande.

Stipulation of counsel that Robert D. Lande would testify that when the recent conversation testified to by one of the pickets as having taken place in the store in the 1000 block in North Crawford Avenue at about 2:00 o'clock in the afternoon, that said R. Lande was just visiting the store and not delivering milk.

SIEGFRIED WEISS, a witness in rebuttal on behalf of the Plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

We pasteurize by the continuous flow process. We have five pasteurizers.

There were unemployed milk wagon drivers in the City of Chicago before the advent of the present vendor system. Most of these vendors were men laid off by the big companies during 1930 and 1931 because of the depression. I know of no wholesale vendor route, with our dairy that has more than one helper.

The effect of violence is that the stores that have the violence quit us, and we can not get new stores on account of this violence happening to the older stores. I have never seen any picketing at stores that did not sell cut rate milk.

Mr. Harris who testified on behalf of the Defendants in this case, started with the Lake View Dairy when the Dairy started in business. He had a very small route. He started with about sixty points or less. A retail route must have 230 points to be profitable. A route under 230 points would not be a profitable route figured on the basis of $48.00 a week wage.

I remember the incident when deductions were made from the drivers of the Lake View Dairy in connection with

joining Local 753. All of the men were prepared to join the Union and they paid $2.00 a week to a fund to get the initiation fee. They did not join the Union. They were refused because at that time Lake View was selling cut rate milk.

I was a vendor myself. In our case, the fact that the
426 store keeper is waiting on a customer, has no influence on the amount of time required for the stop, because we just go in and take in the milk and take out the empties. The storekeeper usually has the order and the money ready.

Cross-Examination by Mr. Riskind.

We had employees at the Lake View Dairy. At the start there were employees that didn't make more than $15.00 a week. At the time we collected the dues from the men. They were all getting $32.50 a week. It is possible that there is one case on the whole route where a vendor would have to wait for the storekeeper. In most cases they would have the money right there with the order. We don't put our milk away in the ice box like 753, where they only deliver ten to fifteen bottles.

EVELYN WAGNER, a witness in rebuttal on behalf of the the Plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

I work for the Wagner Dairy Products, and was present at the office of the dairy in February of this year when Mr. Sumner was there. Mr. Sumner came over and spoke to Frank Wagner in regard to a store in Agro. He wanted to know about buying the store and told Frank that if he could get the store that it would look good for him with the Brown Dairy. Frank said the store could be sold for $400.00. Mr. Sumner said that was too much money. Then Mr. Sumner spoke to Frank about joining the Union. Frank said if we join your Union we can not have helpers on the trucks and we can't sell our milk for two cents cheaper. Mr. Sumner said you know you can't sell it for two cents less, you will have to go along with the boys. The store in Summit is not owned by the Wagner Dairy.

Cross-Examination by Mr. Riskind.

I first found that I was to testify in this case last Friday from my brother Frank Wagner. I had never discussed this case prior to that time with him. I did not ask him what I was going to testify to. I drove down to Mr. Seelig's office Saturday with Mr. Braden. We did not talk about this case. I was not served with a subpoena. Frank Wagner, Mr. Braden and Mr. Korda were in Mr. Seelig's office. Mr. Seelig talked to the witnesses. He just told me to tell him all I knew about the case. Mr. Seelig told me he wanted to know my story and he wanted me to tell the truth.
427 Neither Frank Wagner, nor anyone else interrupted me or attemped to refresh my recollection while I was talking to Mr. Seelig. I don't remember if I was at the dairy at the time Frank Wagner came in and told about the Ogden Avenue incident. We have extension phones in our office. The office is just one big room.

STEVE SUMNER, a witness in rebuttal in behalf of the Defendants, testified as follows:

Direct Examination by Mr. Riskind.

I have visited the Wagner Dairy three or four times within the past two years. I always saw a gun lying on the desk.

Offer of proof of Frank Wagner that a gun is always kept in the desk at the Wagner Dairy.

STEVE SUMNER recalled as a witness in rebuttal on behalf of the Defendants, testified as follows:

Cross-Examination by Mr. Seelig.

I don't know anything about Mr. Riskind testifying concerning a certain payment of $1125.00 in restitution for the destruction of a truck which occurred in February 1934.

We have our men defended by our lawyers when they are taken in Court. In July of 1934, a policeman called me up and said that there was a warrant out for me and said they wanted me in Court on a certain morning. I said we would be there and we were. The case was heard and we were exonerated. About a week before this I visited the Blue

Ribbon Dairy and talked to Mr. Henry Bressler, the President of the Dairy. They were a cut rate dairy at that time.

In 1925 there was the Good Fellowship Club. The members were all milk dealers. The purpose of the club was to cut out the same kind of competition that you fellows are giving, principally in the loop where they were selling milk below cost. They formed the club and I was not a member. They asked me to act as Chairman which I did several times. It was only to try to keep order. I was in Court on one case concerning bombing or vandalism. I do not remember any grand jury investigation of monopoly and bombings and vandalism concerning this club.

Q. And do you remember being called to the State's attorneys office concerning that club, at which time you 428 were ordered to disband the club?

A. I was called to the State's attorneys office, yes. The club disbanded a few months later.

Q. Now isn't it true that yourself and Henry Berger and eighteen others were indicted at that time for coercive methods and bombings and vandalism?

A. Well, I wouldn't say that we were indicted. If we were we never came to trial.

Mr. Seelig: Q. Isn't it true, Mr. Sumner, that in the month of January of 1925, yourself and two automobiles of sluggers stopped the milk truck of the North Shore Dairy because the owner refused to join the Fellowship Club, and that you compelled him to join?

A. I never had any sluggers with me.

Q. Do you remember any incident with the North Shore Dairy?

A. Yes, when he wouldn't pay the scale.

Q. But you don't remember the other incident, do you?

A. Well, I was only there once, and that was on account of the scale, and some men had not gotten in the union.

William Nier was Secretary and Treasurer of our Union for several years. Louis Misch organized some kind of a whiskey workers union. Martin De Frees was business agent of the Bakery Drivers.

Mr. Seelig: Q. Isn't it true that on August 30, 1921, yourself, Robert Fitchie, one of the defendants in this case, Ray Bryant, another defendant in this case, Mr. Wm. Nier, Martin DeFrees, Morris Friedman and Norman N. Ackrie had indictments returned against you in the Superior Court of Illinois for conspiracy and bonds affixed at $5000.00 a piece, is that correct?

* * * * * *

A. Well, I don't just remember. I will say this, that they generally indicted me when they indicted anybody else, whether I was there or not. But, I will say further that out of any indictments that were ever returned, we were never tried on, except one in 1906. That was in the big teamsters strike.

* * * * * *

423 Mr. Seelig: Q. Now, isn't it true that on October 23, 1919, the Supreme Court of the State of Illinois confirmed a sentence for sixty days for contempt of Court for violating an injunction order of Judge Jesse Baldwin against picketing, isn't that true?

* * * * * *

I attended a meeting of the garment workers and I knew there was an injunction, but the injunction did not name me. I told them what I thought about the injunction. I don't think I was breaking any law. They brought me into Court and Clarence Darrow defended me and others. It was carried to the Supreme Court of the State, and the Supreme Court said I was an interloper. I got seventy days by Jesse Baldwin. I had done thirty-two days of it, and they put me up in the hospital and gave me charge of it. At the end of thirty-two days the Judge sent for me and my sentence was discontinued and he said go home and have a good time Christmas.

Harry Ferrey was business agent of the South Chicago Local 742. George Turner was a milk dealer in Roseland. Wiert Speyer was a milkman in Roseland. Philip Shug was business agent of Local 721.

Q. Now, isn't it true that on August 17, of 1908, the three of you were booked at the Kensington Police Station with bonds fixed at $5,000.00 each, charged with assault for the slugging and shooting of Mr. Speyer?

A. That is true.

On numerous occasions I tried to influence Speyer to rejoin our Union. He had dropped his membership some time before the shooting. No, on a visit to Speyer about a week before the shooting I did not tell him that that was the last chance and that if he did not join, we would get him. We were arrested and in the Kensington jail. We were taken to court 8 times and they produced no evidence against us, and the case was dismissed. I don't know why they were unable to produce evidence. I was also indicted by the grand jury in 1905 for conspiracy to injure the business of Montgomery, Ward & Company. The case took about six months in Court. They examined 4700 jury men

before they got 12. Later we were tried and seven
430 out of the 12 said we were not guilty. And then we had a new trial which took only 21 days and the jury was out 75 minutes and brought in a verdict of not guilty.

Redirect Examination by Mr. Riskind.

Q. Now, during this history between 1902 and 1908, Mr. Sumner was there any attempt on the part of anybody to crush Local 753, was there?

A. I don't recall any. If there were, they didn't get far.

Q. Now, were these indictments, would you say that these indictments against you each attempts to crush Local 753.

A. No.

SIEGFRIED WEISS, recalled as a witness on behalf of the plaintiffs, testified as follows:

Direct Examination by Mr. Seelig.

The grocery store at 626 E. 63rd Street distributes the products of our dairy. This store has been picketed for about two weeks by Local 753. I visited the store last Saturday and when I came in, there was a very bad odor. In the carton here are the fragments of the stench bomb in the store. I got it from the owner of the store.

Q. Mr. Weiss, during the pendency of this suit, which was filed, I think, just 30 days ago, what, if anything, has happened to the number of stores through which you distribute your products?

A. We last about 25 to 30 stores through picketing.

Cross-Examination by Mr. Riskind.

I received a call from Mrs. Josephine Hail. She told me her windows were broke and I should go over there, as she didn't know what to do. I have talked to her about her business once in a while prior to that time, about milk and how she could increase her business and about advertising. I did not invest any money in her store. Some times she didn't pay her bills. Maybe $50.00 credit has been given to her. When a storekeeper is given credit, the driver does not always report it to me. On this occasion, it was re-

ported to me. The driver bothered her too much about the money she owed and she didn't like it. I know the approximate value of plate glass. They call us in when the windows are broken and we hear what they charge. I gave Mrs. Hall an estimate for those windows. I don't
431 think on any others. I sent an insurance man over to Mrs. Hall, because she couldn't get any insurance on account of her windows being broken twice.

I did not see anybody throw the stench bomb. To my knowledge I do not know who threw it. There are two pickets still there at the present time. No arrests have been made in so far as this stench bomb is concerned.

Defendants Exhibit 3, (Form of Union Contract), Exhibit 4, (Chicago Milk Ordinance), Exhibit 5 (Constitution and By-Laws of International Brotherhood of Teamsters, etc.) admitted in evidence.

Defendants Exhibit 6 (By-Laws of Milk Wagon Drivers Union of Chicago) Exhibit 7, (By-Laws pertaining to sick and death benefits) Exhibit 8 (copy of opinion of Judge Barnes), Exhibit 9 (Complaint of Wagner Dairy, etc, vs. Milk Wagon Drivers Union), Exhibit 10 (Findings of Master and Decree in Meadowmoor case) admitted in evidence over objection.

Proofs closed.

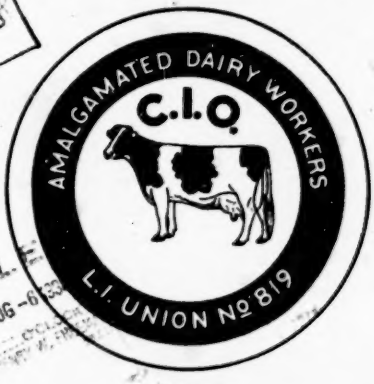
432 Endorsed: In the District Court of the United States. * * (Caption—16073) * * Condensed Statement of Testimony. Filed Jan. 19, 1939. Hoyt King, Clerk. Arthur R. Seelig, Attorney at Law, 11 South La Salle Street, Phone Central 7029, Chicago.

112 And on, to wit, the 6th day of August, 1938, came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court their certain Exhibit No. 1, in words and figures following, to wit:

GRADE A MILK and CREAM

RECEIVED
6/14/11
DISTRICT COURT

In This Store Is Processed



AUG -6

AND DELIVERED

By

UNION WORKERS

WHO ARE MEMBERS OF THE

AMALGAMATED DAIRY WORKERS

L. I. U. No. 819

AFFILIATE OF COMMITTEE FOR INDUSTRIAL ORGANIZATION

(over)

113½ This card is and at all times will remain the property of Amalgamated Dairy Workers L. I. U. No. 819, to be returned to Union upon request at any time.

118 And on, to wit, the 6th day of August, 1938, came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court their certain EXHIBIT NO. 2, in words and figures following, to wit:

119 ARTICLES OF AGREEMENT.

This Agreement made and entered into by and between (Name of Dairy) .....
a private enterprise—a partnership—a corporation, organized under the laws of the State of Illinois, hereinafter referred to as the "Company", and the Amalgamated Dairy Workers L. I. U. No. 819, affiliate of the Committee for Industrial Organization, hereinafter referred to as the "Union".

Section I. It is the intent and purpose of the parties hereto that this Agreement will promote and improve industrial and economic relationships between the Company's employees and the Company, and to set forth herein an Agreement to be observed between the parties hereto.

The term "employee", as used in this Agreement shall mean all wholesale and retail route salesman or drivers and their helpers and assistants; all milk distributors commonly referred to as "Vendors"; all persons employed in the sale and distribution of the Company's products; all pasteurizers, bottlers, helpers and other inside dairy workers; all office and clerical employees; together with all other persons employed either inside or outside by the Company, in the conduct of its business in any capacity whatsoever.

Section II. Recognition: The Company recognizes the Union as the sole collective bargaining agency for its employees, and agrees not to maintain in its employ any person or individual who is not a member in good standing of the Union. The Company further agrees not to engage, hire, or contract with any persons or individuals whose engagement, hiring, or contract will make them an employee of the Company, or vendors as above, unless such persons or individuals apply and are accepted into membership in the Union within forty-eight (48) hours after they

have become employees of the Company, or receive the products of the Company. This procedure shall be binding upon the Company during the life of this Agreement.

The Union agrees that so long as the Company shall comply with the terms hereof, and with the terms of all such additional agreements as there may hereafter be, that it will recognize the Company as a "Union Dairy", and that the Company shall be permitted to use the Union Label and other Union insignia. These conditions shall be binding upon the Union during the life of this Agreement.

Section III. Procedure: Within sixty (60) days after the Company and the Union have signed this Agreement, representatives of the Company and other dairies signing similar agreements, and of the Union, shall meet to negotiate all questions of wages, hours, and conditions of employment that shall prevail in the Companies' business. Matters on which the Companies and the Union agree shall be put into writing in Agreements, which shall be in full force and effect for one year after they are negotiated and signed, and which will carry provisions for renewal or amendment upon their expiration.

In the event that within ten days after negotiations are opened for formulating an agreement as to wages, hours and conditions of employment, there are still questions undetermined between the Companies and the Union, the matter shall then be appealed to an impartial Board of Arbitration, consisting of three members, one member to be selected by the Companies, one member to be selected by the Union, and the third member to be chosen by the first two members. The decision of the majority of the said arbitrators shall be final, and be binding upon both parties hereto, and upon all other dairies involved.

Section IV. Management. The management of the Companies' business and the direction of their employees, including the right to hire (subject to the terms of this and future Agreements), suspend or discharge for proper cause, or transfer, and the right to relieve employees from duty because of lack of work, or for other legitimate reasons, is vested exclusively in the Company, provided that this will not be used for purposes of discrimination against the Union.

Section V. Term: This Agreement shall be and remain in full force and effect from the date hereof, and for one year thereafter, except as the same may be enlarged, modi-

fied or changed by written Agreement provided for in
121 Paragraph 3, hereinabove.

In Witness Whereof, the parties hereto have executed this Agreement this ..... day of ..... A. D. 1938.

Amalgamated Dairy Workers, L. I. U. No. 819.

By:.....

.....

.....

.....

Company.

.....

.....

.....

114 And on, to wit, the 6th day of August, 1938, came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court their certain EXHIBIT NO. 4, in words and figures following, to wit:

115 ARTICLES OF AGREEMENT.

This Agreement made and entered into by and between Lake Valley Farm Products Inc., a corporation, organized
(Name of Dairy)
under the laws of the State of Illinois, hereinafter referred to as the "Company", and the Amalgamated Dairy Workers L. I. U. No. 819, affiliate of the Committee for Industrial Organization, hereinafter referred to as the "Union".

Section I. It is the intent and purpose of the parties hereto that this Agreement will promote and improve industrial and economic relationships between the Company's employees and the Company, and to set forth herein an Agreement to be observed between the parties hereto.

The term "employee", as used in this Agreement shall mean all wholesale and retail route salesman or drivers and their helpers and assistants; all milk distributors commonly referred to as "Vendors"; all persons employed in the sale and distribution of the Company's product; all pasteurizers, bottlers, helpers and other inside dairy workers; all office and clerical employees; together with all other persons employed either inside or outside by the Company, in the conduct of its business in any capacity whatsoever.

Section II. Recognition: The Company recognizes the

Union as the sole collective bargaining agency for its employees, and agrees not to maintain in its employ any person or individual who is not a member in good standing of the Union. The Company further agrees not to engage, hire, or contract with any persons or individuals whose engagement, hiring, or contract will make them an employee of the Company, or vendors as above, unless such persons or individuals apply and are accepted into membership in the Union within forty-eight (48) hours after they have become employees of the Company, or receive the products of the Company. This procedure shall be binding upon the Company during the life of this Agreement.

The Union agrees that so long as the Company shall
116 comply with the terms hereof, and with the terms of all such additional agreements as there may hereafter be, that it will recognize the Company as a "Union Dairy", and that the Company shall be permitted to use the Union Label and other Union insignia. These conditions shall be binding upon the Union during the life of this Agreement.

Section III. Procedure: Within sixty (60) days after the Company and the Union have signed this Agreement representatives of the Company and other dairies signing similar agreements, and of the Union, shall meet to negotiate all questions of wages, hours, and conditions of employment that shall prevail in the Companies' business. Matters on which the Companies and the Union agree shall be put into writing in Agreements, which shall be in full force and effect for one year after they are negotiated and signed, and which will carry provisions for renewal or amendment upon their expiration.

In the event that within ten days after negotiations are opened for formulating an Agreement, as to wages, hours and conditions of employment, there are still questions undetermined between the Companies and the Union, the matter shall then be appealed to an impartial Board of Arbitration, consisting of three members, one member to be selected by the Companies, one member to be selected by the Union, and the third member to be chosen by the first two members. The decision of the majority of the said arbitrators shall be final and be binding upon both parties hereto, and upon all other dairies involved.

Section IV. Management. The management of the Companies' business and the direction of its employees, including the right to hire (subject to the terms of this and future Agreements), suspend or discharge for proper cause, or transfer, and the right to relieve employees from duty be-

cause of lack of work, or for other legitimate reasons, is vested exclusively in the Company, provided that this will not be used for purposes of discrimination against the Union.

Section V. Term: This Agreement shall be and remain in full force and effect from the date hereof, and for one year thereafter, except as the same may be enlarged, modified or changed by written Agreement provided for
117 in Paragraph 3, hereinabove.

In Witness Whereof, the parties hereto have executed this Agreement this 18 day of April A. D. 1938.

Amalgamated Dairy Workers, L. I. U. No. 819.
By: Nicholas R. Kost, Jr.,
Pres.
Joe J. Igoe,
Secy. & Treas.
C. R. Zalewski,
Rec. Sec'y.
John E. Igoe,
Vice Pres.

Company.
Lake Valley Farm Prod., Inc.
By: Siegfried Weiss
Pres.
Joseph Kaiser
Vice Pres.

123 And on, to wit, the 6th day of August, 1938, came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court their certain EXHIBIT NO. 5, in words and figures following, to wit:

124 ARTICLES OF AGREEMENT.

This Agreement made and entered into by and between Wagner Dairy Products, a private enterprise hereinafter
(Name of Dairy)
referred to as the "Company", and the Amalgamated Dairy Workers L. I. U. No. 819, affiliate of the Committee for Industrial Organization, hereinafter referred to as the "Union".

Section I. It is the intent and purpose of the parties hereto that this Agreement will promote and improve industrial and economic relationships between the Company's

employees and the Company, and to set forth herein an Agreement to be observed between the parties hereto.

The term "employee", as used in this Agreement shall mean all wholesale and retail route salesman or drivers and their helpers and assistants; all milk distributors commonly referred to as "Vendors"; all persons employed in the sale and distribution of the Company's products; all pasteurizers, bottlers, helpers and other inside dairy workers; all office and clerical employees; together with all other persons employed either inside or outside by the Company, in the conduct of its business in any capacity whatsoever.

Section II. Recognition: The Company recognizes the Union as the sole collective bargaining agency for its employees, and agrees not to maintain in its employ any person or individual who is not a member in good standing of the Union. The Company further agrees not to engage, hire, or contract with any persons or individuals whose engagement, hiring, or contract will make them an employee of the Company, or vendors as above, unless such persons or individuals apply and are accepted into membership in the Union within forty-eight (48) hours after they have become employees of the Company, or receive the products of the Company. This procedure shall be binding upon the Company during the life of this Agreement.

The Union agrees that so long as the Company shall
125 comply with the terms hereof, and with the terms of all such additional agreements as there may hereafter be, that it will recognize the Company as a "Union Dairy", and that the Company shall be permitted to use the Union Label and other Union insignia. These conditions shall be binding upon the Union during the life of this Agreement.

Section III. Procedure: Within sixty (60) days after the Company and the Union have signed this Agreement, representatives of the Company and other dairies signing similar agreements, and of the Union, shall meet to negotiate all questions of wages, hours and conditions of employment that shall prevail in the Companies' business. Matters on which the Companies and the Union agree shall be put into writing in Agreements, which shall be in full force and effect for one year after they are negotiated and signed, and which will carry provisions for renewal or amendment upon their expiration.

In the event that within ten days after negotiations are opened for formulating an agreement as to wages, hours and conditions of employment, there are still questions undetermined between the Companies and the Union, the

matter shall then be appealed to an impartial Board of Arbitration, consisting of three members, one member to be selected by the Companies, one member to be selected by the Union, and the third member to be chosen by the first two members. The decision of the majority of the said arbitrators shall be final, and be binding upon both parties hereto, and upon all other dairies involved.

Section IV. Management. The management of the Companies' business and the direction of their employees, including the right to hire (subject to the terms of this and future Agreements), suspend or discharge for proper cause, or transfer, and the right to relieve employees from duty because of lack of work, or for other legitimate reasons, is vested exclusively in the Company, provided that this will not be used for purposes of discrimination against the Union.

Section V. Term: This Agreement shall be and remain in full force and effect from the date hereof, and for one year thereafter, except as the same may be enlarged, modified or changed by written Agreement provided for in
126 Paragraph 3, hereinabove.

In Witness Whereof, the parties hereto have executed this Agreement this 3rd day of May A. D. 1938.

Amalgamated Dairy Workers, L. I. U. No. 819,
By: Nichols P. Kost, Jr.
Pres.

John E. Igoe
Vice Pres.

Cass R. Zalewski
Recd. Sec.

Joe J. Igoe
Secy. & Treas.

Company.
Wagner Dairy Products
By Frank Wagner

127 And on, to wit, the 6th day of August, 1938, came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court their certain Exhibit No. 7, in words and figures following, to wit:

128 PLAINTIFFS' EXHIBIT NO. 7.

Constitution of Amalgamated Dairy Workers Local Industrial Union No. 819.

Affiliate of Committee for Industrial Organization.

Article I.—Name and Affiliation.

Section 1.—This Union shall be known as the Amalgamated Dairy Workers, Local Industrial Union No. 819, of Chicago, Illinois. It shall be affiliated with the Committee for Industrial Organization in accordance with the terms of the charter granted by the Committee for Industrial Organization.

Article II.—Objects.

Section 1.—It shall be the object of the Union to secure a comfortable living, shorter hours, improved working conditions and security for its members, in other ways to protect, maintain and advance their interests, and to organize the unorganized in conformity with its jurisdiction.

Article III.—Membership.

Section 1.—The membership of the Union shall include workers employed in and around dairies and all businesses dealing in the processing, sale and distribution of milk and milk products

Article IV.—Officers.

Section 1.—The officers of the Union shall be a President, Vice-President, Recording Secretary, Financial Secretary, Treasurer, Sergeant-At-Arms, three Trustees and one Counsellor, and an Executive Board composed of the President, Vice-President, Recording Secretary, Financial Treasurer, and Counsellor.

Election of Officers.

Section 2.—For the initial and organizational period of operation, the calling of election of officers shall be vested in the sole discretion of the executive Board provided, however, that said election shall be called within three years after the date of the adoption of this constitution; and provided that an election of officers may be called in April of any year hereafter, at the request of fifty (50%) per cent

of the members; thereafter the officers shall be elected at the first (1st) membership meeting in the month of
129 April of each year, and shall hold office for a term of twelve months.

Section 3.—The Trustees shall be appointed by the Executive Board, and shall normally hold office for three years, and at the first regular election one Trustee shall be elected for a term of one year, one for two years, and one for three years.

Section 4.—Nominations for officers shall be made at a meeting of the Union at least seven days before the meeting at which elections are held, and members shall be properly informed of the coming election and of the nominations made.

Section 5.—Only members in good standing shall be eligible for office.

Section 6.—Elections shall be by secret ballot, and it shall require a majority of votes cast to elect.

Section 7.—Before a vote is taken, it shall be the duty of the President to appoint two or more tellers to see that the ballots are properly counted, and to safeguard the secrecy and honesty of the vote.

Section 8.—At the expiration of the term of office, by termination or otherwise, of any officer, he shall turn over to his successor all money, property, papers, records and books of the Union that may be in his possession.

Section 9.—Upon the death, resignation, or removal for cause of any officer, it shall be the duty of the Executive Board to order an election to fill such vacancy.

130-131 (Omitted pursuant to stipulation filed March 16, 1939.)

132 Article VII.—Committees.

Section 1. The Standing Committees shall consist of:
Organizing Committee.
Activities Committee.
Working Rules Committee.
Bargaining Committee.

Section 2. Special Committees may be elected or appointed as need arises.

Section 3. The members of the Standing Committees, shall be appointed by the President, subject to the approval of the Executive Board. The members of each Standing Committee shall elect a permanent Chairman.

Organizing Committee.

Section 4. The Organizing Committee shall have the duty of:

(a) Extending unionism throughout the jurisdiction of the Union, through such methods as house-to-house canvassing, meetings, and distribution of literature.

(b) Passing on applications for membership through a Membership Sub-Committee.

Activities Committee.

Section 5. The Activities Committee shall have the duty of:

(a) Studying the question of activities that will increase the value of the Union to its members and that will serve to make union membership more attractive, such as entertainment, education, athletics, social activities, relief and welfare and the promotion of union-made goods.

(b) Conducting activities and projects along the above lines decided upon by the membership, enlisting the services of the membership to that end.

(c) Conducting money raising activities recommended by the Executive Board, and subject to the approval of the membership.

133 Working Rules Committee.

Section 6. The Working Rules Committee shall have the duty of:

(a) Drawing up and submitting to the Union rules that will be to the best interests of the Union and its members.

(b) Recommending action in regard to amendments to the Constitution and Standing Rules of the Union.

(c) Investigating and making recommendations in regard to any motion, question or other matter referred to it involving constitutionality, legality or advisability.

(d) Checking on the qualifications under the Constitution of nominees for office.

Bargaining Committee.

Section 7. If necessary, a Bargaining Committee may be created for each plant or establishment, except in the case of small ones.

Section 8. It shall be the duty of the Bargaining Committee:

(a) To negotiate agreements with management, and to

confer with management on grievances or problems that cannot be settled by Shop Committeemen.

(b) To supervise and coordinate the work of Shop Committeemen.

(c) To compile necessary information on wages and other conditions of work for use in negotiations or that may be requested by the C. I. O.

Article VIII.—Membership Meetings.

Section 1. Regular membership meetings of the Union shall be held at least once a month.

Section 2. At any meeting the members present by majority vote may ratify or reject any act of the Executive Board, of any other official body of the Union, or of any of the officers or agents of the Union, which shall be submitted to the meeting, provided that such action is not in violation of the Union's Constitution or the rules of the C. I. O.

134 Article IX.—Initiation Fees, Dues and Assessments.

Section 1. Initiation fees, dues and per capita to the C. I. O. shall be collected and paid in accordance with the rules of the C. I. O.

Section 2. The Union may from time to time levy and collect an assessment or tax on its membership.

Section 3. The Financial Secretary shall provide proper receipt for the tax or assessment, and shall properly record all payments made.

Article X.—Loss of Membership, Reinstatement.

Section 1. Members who are employed all or part of the time must pay dues in advance. Working members are not in good standing who owe one month's dues.

Section 2. Any member who shall fail to pay dues for a period of three months without exoneration shall be notified by the Financial Secretary. If such delinquent fails to place himself in good standing within 30 days from such notice, he shall lose his membership.

Section 3. Any member who has thus been dropped from membership can be reinstated only by paying the regular initiation fee and charges together with all the money due the Union at the time his name was dropped and all dues that have accrued to time of reinstatement, unless otherwise decided by the Union.

Article XI.—Charges and Trials.

Section 1. Any member may prefer charges against any other member or officer of the Union. Such charges must be in writing, and the accused shall have the right to a fair hearing.

Article XII.—Strikes.

Section 1. When a controversy develops between the Union and an employer or association of employers which may result in a strike or a lockout, the Bargaining Committee or Committees shall confer with the representatives of the employer or employers to endeavor to secure an amicable settlement. Should no adjustment prove possible, then a strike may be called after a special meeting of the members and upon a vote in favor of a strike by a majority of the members present. This vote shall be by secret ballot.

A full report shall be submitted to the Regional Di-
135 rector of the C. I. O. or some other authorized repre-
sentative of the C. I. O. for his approval in accordance with the C. I. O. Rules.

Section 2. Before a strike shall be declared off, a special meeting of the Union shall be called for that purpose, and it shall require a majority vote, by ballot, of all members present to decide either way, except that a strike may be declared off by the Executive Board in cases where immediate action is required.

Article XIII.—Union Label.

Section 1. Any officer or member of the Union who illegally issues or supplies, or aids in illegally issuing or supplying a union label, shall be legally prosecuted and shall be barred from membership in the Union.

Article XIV.—Amendments.

Section 1. The Constitution may be amended by a two-thirds vote at any regular meeting of the Union if the amendment to be voted on has been read aloud at the preceding meeting or the membership have been notified in writing of the proposed amendment four days in advance.

Article XV.—Standing Rules.

Section 1. The Standing Rules of the Union may be changed by majority vote at any meeting without advance notice.

136 Standing Rules for Amalgamated Dairy Workers, L. I. U. No. 819.

Part A—Membership.

Rule 1. Candidates for membership shall make written application for memberships to be approved by the Union. It shall require majority approval of a membership meeting to elect a candidate to membership, providing that, for reasons of secrecy, the meeting may by a two-thirds vote waive such action on candidates and take individual action only on persons whose applications are questioned by the Membership Sub-Committee.

Rule 2. New members, before being admitted to full membership, shall make the following affirmation:

"I do sincerely promise, of my own free will, to abide by the laws of the Union; to bear true allegiance to, and keep inviolate the principles of the Committee for Industrial Organization; never to discriminate against a fellow worker on account of creed, color, or nationality; to defend freedom of thought, whether expressed by tongue or pen, to defend on all occasions and to the extent of my ability the members of our organization.

"That I will assist all members of our organization to obtain the highest wages possible for their work; that I will not accept a brother's job who is idle for advancing the interests of the Union or seeking better remuneration for his labor; and as only by standing together can workers improve their lot, I promise to cease work at any time I am called upon by the organization to do so. And I further promise to help and assist all brothers in adversity, and to have all eligible workers join the Union that we may all be able to enjoy the fruits of our labor; and that I will never knowingly wrong a brother or see him wronged, if I can prevent it.

"To all this I pledge my honor to observe and keep as long as life remains, or until I am absolved by the Union or the Committee for Industrial Organization."

Part B—Officers.

Rule 1. Before entering upon the duties of their re-
137 spective offices, the newly elected officers shall make the following affirmation:

"I, ..., do hereby sincerely pledge my honor to perform the duties of my office as required by

the laws of the Union and of the Committee for Industrial Organization, and to bear true allegiance to this Union and to the C. I. O. I will deliver to my successor in office all books and other property of the Union that may be in my possession at the close of my official term. All of this I solemnly promise, with full knowledge that to violate this pledge is to stamp me as a person devoid of principle and destitute of honor."

Rule 2. Installation of officers shall take place at the first meeting after election of officers.

Vacancies.

* * * * * *

139 Part G.—Membership Meetings.

Rule 1. Regular membership meetings shall be held on the ..... of each month, without the necessity of special notice therefor.

Rule 2. The hour of meeting shall be promptly at eight o'clock P. M.

Rule 3. Business can be carried on legally only when a quorum of ten members is present.

Rule 4. Special meetings may be called upon due notice by the Executive Board or at the request of 25 per cent of the members. The Recording Secretary shall notify all members of a special meeting at least 12 hours before it convenes.

Rule 5. Membership meetings shall be conducted in accordance with Robert's Rules of Order, except as may be otherwise provided herein.

Rule 6. A time limit of five minutes shall be placed on reports of Committee Chairmen and on discussion by any member, provided that a longer time may be allowed by a two-thirds vote of the members present.

140-141 (Omitted pursuant to stipulation filed March 16, 1939.)

177 And on, to wit, the 18th day of August, 1938, came the Defendants by their attorneys and filed in the Clerk's office of said Court their certain Exhibit No. 3, in words and figures following, to wit:

178 DEFENDANTS' EXHIBIT 3.

Filed Aug 18 1938 at ..... O'clock ..... Henry W. Freeman, Clerk.

Milk Wagon Drivers' Union
Local 753 I. B. of T., C., S. & H. of A.

Articles of Agreement

Article 1. Between ....., milk dealer, party of the first part, hereinafter called the employer, and the Milk Wagon Drivers' Union, I. B. of T., C., S. and H. of A., party of the second part, hereinafter called the Union.

Article 2. The employer, party of the first part, agrees to hire members of the Union carrying the regular working card of the organization, or those who will become members within thirty days after taking such position.

Article 3. It is agreed and understood by the parties herein mentioned, that the hours for delivering milk for the summer period during the life of this agreement shall be from the third Sunday in June, to the five days preceding Labor Day, from any time in the morning that the business may require, until 12 o'clock noon. All wagons must be off the street by one o'clock.

Article 4. From Labor Day to the third Sunday in June, for the winter period, no wagons shall be allowed on the street before 7 A. M., and deliveries shall not begin before 8 A. M. All wagons must be off the street by 5 P. M. during this period. A district bounded on the north by Chicago Ave., on the west by Halsted St., on the south by Roosevelt Road (it is understood that the word street means customers on both sides of the street), shall not be regulated by the rule prescribed for the period from Labor Day. Trade in this territory shall be supplied from any time in the morning that the business may require, until 12 o'clock noon. All wagons must be out of this territory by 1 P. M.

Article 5. It is agreed that all previously experienced employees coming under the jurisdiction of this agreement shall at the end of any fifty-two weeks' service with one firm be entitled to two weeks' vacation with pay. If at the end of fifty-two weeks a driver either resigns or is discharged, he shall have two weeks' pay in lieu of his vaca-

tion. Summer vacation periods shall be scheduled April 1st of each year, to October 1st. Drivers to pick their vacation period by order of seniority. Any driver with previous experience going to work on or before January 1st, shall at the end of fifty-two weeks of continuous service with one firm be entitled to two weeks' vacation, and on April 1st, be entitled to schedule. Men without previous experience do not come under this rule. Such drivers starting to work after October 1st shall not be entitled to schedule for vacation until the second vacation period following.

Article 6. The employer agrees that he will enforce Article 3, except in case of breakdown, accident or delay beyond his control.

Article 7. The Union concedes to the employer the right to make occasional special deliveries to their wholesale trade only. Places that resell milk at retail shall be classed as retail. Only one regular delivery shall be made to the trade.

Article 8. Sunday and legal holidays, except Lincoln's and Washington's birthdays, all wagons shall start any time in the morning that business may require, but not later than 5:00 A. M., and be off the street by 11:00 A. M. Labor Day all wagons shall be off the street by 10:00 A. M.

Article 9. Interest shall be paid on all cash deposits at the rate of four (4) per cent per annum. Should the employer require the driver to give bond the same shall be furnished, the driver to pay one-half the premium.

Article 10. The Union, Local 753, agrees, should charges of drunkenness or dishonesty, incompetency, smoking or drinking while on duty be preferred against any of its members, and such charges are proven, the said member shall be fined or suspended.

Article 11. There shall be a steward at each dairy to see that the members of the Union live up to the rules of the Union and Dairy. Said steward shall be elected by members of the union, working at said dairy, and shall be allowed one day off during the months of January, April, July and October, with pay, for the purpose of collecting dues.

Article 12. In case of lockout or strike of any Union, it shall not be considered a violation of this agreement for the members of this Union to refuse to deliver goods where such controversy is on.

Article 13. The Union agrees at all times, as far as in

its power, to further the interests of the employer. It is mutually agreed between the parties herein named, that the customers and consumers of the employer belong to and are a part of the assets and good-will of the said milk dealer; that the driver solicits, serves and sells such customers and consumers in a representative capacity only and if for any reason whatsoever any member of the said Union terminates his employment or is discharged or dismissed or for any other reason said employment ceases and is terminated, it is understood and agreed that any such driver or his agents shall not call upon, solicit, sell or interfere with or divert the customers or consumers formerly served by him on behalf of his former employer for a period of two (2) years from the date of his termination of employment.

It is further understood that if a driver were to resign as a member of the Union, in no event would this abrogate the agreement until the space of the two (2) years from the date of his resignation or discharge has elapsed.

The Union shall not be required to pay any costs of any proceedings relative to the procuring of any order restraining a driver from "stripping his route." The party of the first part shall advance any and all costs necessary relative thereto, and party of the second part agrees to abide by Article No. 13.

The provisions of this paragraph shall be suspended in the event of, and during a general strike by the members of the Union.

Article 14. It is further agreed by the employer that when a route is split, the driver whose route is so divided shall have first choice of the two routes with full pay for the six months following, to be governed by the thirty days' average sales previous to dividing said route.

Article 15. Should any member of this Union be suspended or expelled from the Union for good cause, the employer agrees to discharge such person within fifteen days after receiving due notice from the officials of the Union.

179 Article 16. It is further agreed by the employer that drivers shall be allowed to drive in, unload their returns, and settle their accounts as soon as their routes are properly finished. Only milk and ice trucks to have the right of way in loading and unloading.

Article 17. All trucks used in carrying milk to and from trains and supplying manufacturing concerns, which are not or cannot be supplied by the regular route men or

salesmen, shall not be controlled by the rules prescribed in Article 3; said truckmen shall not be regular route men.

Article 18. Route foremen, route inspectors, routemen, truck drivers, helpers, extra men, and special delivery men shall become members of the Union who spend 51 per cent of their time driving.

Article 19. Should any controversy arise not provided for in these Articles, it shall be submitted to a committee of five for arbitration, two to be selected by the first party, two by the second party, and the fifth by the first four. During such time as the matter is pending there shall be no lockout or strike. The decision of said committee to be final.

Article 20. It is agreed by the Union that any driver wishing to quit his position must give his employer one week's notice. It is agreed by the employer that if he wishes to discharge a driver he will give him one week's notice.

Article 21. At the expiration of the week the driver shall receive all money due him and on request be issued a statement in reference to his character and services.

Article 22. It is further agreed by the employer that no employee will be asked to make any written or verbal contract which may conflict with this agreement.

Article 23. Any employe found guilty of taking lanterns, cans, whips, blankets or any other articles from wagons of other employes shall be fined not less than Five ($5.00) Dollars for each offense.

Article 24. Any question pertaining to Article 3 or 4 shall be referred to a committee from the employers and from the employes. The decision to be binding on both parties to this contract.

Wage Scale—Average Wage

In Effect May 1st, 1937, to September 1, 1937

	Per Week	Per Day	7 Day Week
Retail route men	$45.00	$7.50	$52.50
Inexperienced men	44.00	7.33	51.33
Route foremen	51.00	8.50	59.50
Auto trucks (night work)	50.00	8.33	58.33
Auto trucks (day work)	49.00	8.17	57.17
Truck drivers (night work minimum)	46.00	7.67	53.67
Truck drivers (3 and 4 horse teams, nights)	48.00	8.00	56.00

	Per Week	Per Day	7 Day Week
Truck drivers (day work)	44.00	7.33	51.33
Special and extra men	44.00	7.33	51.33
Wholesale drivers (not receiving commission)	48.00	8.00	56.00
Wholesale drivers (receiving commission)	46.50	7.75	54.25
Assistant route foremen	49.00	8.17	57.17

Commissions to be figured at 60c per hundred over 1,333 points on seven (7) day routes and over 1,142 points on six (6) day routes.

In Effect September 1st, 1937, to May 1st, 1938

Retail route men	$45.00	$7.50	$52.50
Inexperienced men	44.00	7.33	51.33
Route foremen	52.00	8.67	60.67
Auto trucks (night work)	50.00	8.33	58.33
Auto trucks (day work)	49.00	8.17	57.17
Truck drivers (night work minimum)	46.00	7.67	53.67
Truck drivers (3 and 4 horse teams, nights)	48.00	8.00	56.00
Truck drivers (day work)	44.00	7.33	51.33
Special and extra men	44.00	7.33	51.33
Wholesale drivers (not receiving commission)	49.00	8.17	57.17
Wholesale drivers (receiving commission)	46.50	7.75	54.25
Assistant route foremen	50.00	8.33	58.33

Commissions to be figured at 75c per hundred over 1,333 points, on seven (7) day routes, and over 1,142 points on six (6) day routes, up to 4,000 points per week. Over 4,000 points at 90c per hundred.

180 In Effect May 1st, 1938, to May 1st, 1940

Retail route men	$48.00	$8.00	$56.00
Inexperienced men	47.00	7.83	54.83
Route foremen	55.00	9.17	64.17
Auto trucks (night work)	53.00	8.83	61.83
Auto trucks (day work)	52.00	8.67	60.67
Truck drivers (night work minimum)	49.00	8.17	57.17
Truck drivers (3 and 4 horse teams, nights)	51.00	8.50	59.50

	Per Week	Per Day	7 Day Week
Truck drivers (day work)	47.00	7.83	54.83
Special and extra men	47.00	7.83	54.83
Wholesale drivers (not receiving commission)	52.00	8.67	60.67
Wholesale drivers (receiving commission)	49.50	8.25	57.75
Assistant route foremen	53.00	8.83	61.83

Commissions to be figured at 75c per hundred over 1,333 points, on seven (7) day routes, and over 1,142 points on six (6) day routes, up to 4,000 points per week. Over 4,000 points at 90c per hundred.

Article 25. All employees coming under the jurisdiction of the Milk Wagon Drivers' Union, Local 753, I. B. of T., C., S. and H. of A., shall be entitled to a six-day week, seniority to prevail in the selection of days off. If it is impossible to give an employee his day off each week he shall receive one extra day's pay at the prevailing rate of wages. Employees to have their day off except June, July and August. Any man declaring he wishes to have his day off in June, July and August shall not be compelled to work.

Article 26. All retail routemen will receive a commission as specified in scales on all goods sold over a base of 1,333 points per week. Six day routes to be figured on a base of 1,142 points per week. All inexperienced milk wagon drivers' salaries will be One Dollar ($1.00) a week less for the first thirteen weeks.

Article 27. Commissions on butter sold at retail shall be one cent per pound. Commissions on eggs, one cent per dozen. Commissions on cheese, one cent per jar of 1 pound or less; in larger quantities, one cent per pound at retail. Such commissions must be paid over and above guaranteed salary. All commissions to be paid monthly not later than the fourth pay day of the following month.

Article 28. A point of goods sold on retail wagons shall consist of one quart of milk, one pint of milk, four half-pints of milk, three one-third quarts of milk, one quart of skim, one-half pint or two gills of cream, one quart of buttermilk. Commission on schools served by either retail or wholesale wagons.

Article 29. All goods sold from retail routes to be classed as retail.

Article 30. All guaranteed salary due shall be paid on Thursday for the preceding week ending Saturday.

Article 31. Route foremen shall receive a guarantee of wages as specified in above scales. Assistant route foremen shall receive wages as specified in above scales. Any foreman receiving more than the scale shall have that amount added to his guarantee.

Article 32. All drivers of auto trucks shall receive wages as specified in above scales. Eight (8) hours shall constitute a day's work for night men, and nine (9) hours shall constitute a day's work for day men. All drivers of auto trucks who begin work at 4 P. M. or thereafter shall be considered night truckmen. All drivers who begin at 4 A. M. or thereafter will be considered day truckmen.

Article 33. Any route man absent from his route for a period of not more than 14 days shall receive the commission from same; after that period commission is to be paid to whoever is on the route.

Article 34. If route foremen are required to serve two routes alone in one day they shall receive one extra day's pay as compensation. If a route man is required to go out on a second route in one day he shall receive one extra day's wages for same.

Article 35. Any route man or route foreman shall pay all shortage at the end of each month; if over, he shall be given credit for same.

Article 36. All stolen, broken, spilled or sour goods to be allowed daily, upon proper evidence.

Article 37. All truck drivers who do night trucking shall receive minimum wages as specified above. Eight (8) hours shall constitute a day's work for night men.

Article 38. All other truck drivers shall receive wages as specified in above scales, nine (9) hours to constitute a day's work.

Article 39. Special men, and extra men, to receive wages as specified in above scales, eight (8) hours to constitute a day's work for night men and nine (9) hours for day men.

Article 40. Time and one-half shall be paid for all overtime except in cases of breakdowns or delay beyond the control of the employer.

Article 41. Wholesale drivers shall receive wages as specified in above scales. Any wholesale driver receiving more than the scale shall have that amount added to his guarantee.

Article 42. It is also agreed that during the life of this agreement there shall be no so-called "hired solicitors" in the employ of the party of the first part. Helpers on wagons or trucks, wholesale or retail, absolutely prohibited.

181 Article 43. Any firm wishing drivers to wear uniforms, shall furnish same and k ep them laundered and in repair free of charge, and must bear the Union Label.

Article 44. This Agreement shall go into effect May 1st, 1937, and continue in full force and effect until May 1st, 1940, and will continue thereafter unless notice is given by either party Thirty (30) days prior to May 1st, 1940, or thirty (30) days prior to May 1st in any year thereafter.

Union:

.....

President.

.....

Secretary-Treasurer.

Employers:

.....

.....

(Union Label) 228

182 And on, to wit, the 18th day of August, 1938, came the Defendants by their attorneys and filed in the Clerk's office of said Court their certain Exhibits Nos. 5, 6 and 7, in words and figures following, to wit:

183 DEFENDANTS' EXHIBIT 5.

184 Constitution and By-Laws

of the

International
Brotherhood of Teamsters
Chauffeurs, Stablemen
and Helpers
of America

(Cut)

Affiliated with the American Federation of Labor
Adopted at the Convention held in Portland, Oregon,
September 9th to 13th, inclusive, 1935
In full force and effect on and after December 1, 1935
(Typographical Union Label) 81

Preamble

As almost every improvement in the condition of the working people was accomplished by the efforts of organized labor, and as the welfare of the members of a craft can best be protected and advanced by their united action in one great labor organization, we have organized the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers, under the American Federation of Labor, and adopt the following constitution:

185 Constitution

of the

International Brotherhood of
Teamsters, Chauffeurs, Stablemen
and Helpers

Name

Section 1. This organization shall be known as the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers and shall consist of an unlimited number of Local Unions chartered by the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers.

Objects

Sec. 2. To organize under one banner all workmen engaged in the craft, and to educate them to co-operate in every movement which tends to benefit the organization; to impress upon the teamsters, chauffeurs and the public that a profitable teamster, chauffeur or stableman must be honest, sober, intelligent and naturally adapted to the business; to teach them to take advantage of their industrial position and to build up and perfect an impregnable labor organization; to improve the industry by increasing the efficiency of the service and creating a feeling of confidence and good will between employer and employee which will prevent a recurrence of the unnecessary conflicts which have arisen in the past and to co-operate and deal fairly and honestly with all employers who are willing to investigate and adjust difficulties which may arise, and to secure for the teamsters, chauffeurs, stablemen and helpers reasonable hours, fair wages and proper working conditions.

Jurisdiction

Sec. 3. This organization has jurisdiction over all teamsters and helpers, chauffeurs and helpers, stablemen and all who are employed on horses, harness, carriages or automobiles, in and around stables or garages, other than mechanics. Dairy employees are classified as helpers and are eligible for membership.

Sec. 4. No person shall be entitled to membership in this organization who owns or operates more than one team or vehicle. The General Executive Board, when they deem it advisable or for the best interest of our International Union and upon the recommendation of the Local Union, may allow a man to own more than one team or vehicle and hold membership, provided that he hires or employs none but members of our International Union and that he drives a vehicle himself and pays the driver the prevailing rate of wages in the locality.

Any man owning and operating but one team or automobile is entitled to membership in our organization. This will also permit the owner of one team or automobile to hire a helper in case he is sick or disabled or working for his Local Union or for the International Union. He
186 may get a substitute to work for him, but the substitute must be a member of the International Organization. Individual owners shall not be permitted to vote on a strike involving journeymen, nor shall they be permitted to vote

on wages and working conditions of journeymen drivers, chauffeurs, or helpers.

Any member of the International organization going to work at another craft must be given an honorable withdrawal card, and cannot remain a member of the International organization.

Any ex-member out on withdrawal card and working under the jurisdiction of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers must re-deposit his withdrawal card with the local from which it was issued and transfer into the Local Union under whose jurisdiction he is working, if one exists in the city in which he is employed. Failure to comply with this rule cancels his withdrawal card.

Local Unions are not compelled to accept withdrawal cards if member has committed any offense while out on withdrawal card which would be injurious to union principles. Also if local union is paying benefits and member has fallen into bad health or is liable to become a charge against the local or International Union, acceptance of withdrawal card can be refused by Local Union.

Any Local Union of the International Brotherhood of Teamsters, Chauffeurs and Stablemen, who by their charters have been granted jurisdiction over teamsters of any craft, shall also have jurisdiction over all chauffeurs working at the same craft.

To be eligible for election to any office of Local Union or International Union a member must be in continuous good standing for a period of one year prior to nomination for said office. This does not apply to newly organized local unions except as follows: Local Unions organized for less than one year an individual must be a member and in continuous good standing for at least half of the period of time since local union was chartered by International Union. To be eligible to hold office in a Local Union a member must be a citizen of the country in which his Local Union is located.

No member of the Communist Party shall be allowed to hold membership or be admitted to membership in any Local Union of the International Organization. If by false statements such individual has obtained membership he shall be expelled. It is not necessary that the individual charged with membership in the Communist Party admit his membership in said party. If the Local Union Executive Board, by majority vote, are satisfied by the evidence presented that the individual is a member of the Communist Party or any branch of the Communist Party, the Local

Executive Board shall have the power to expel such individual after he has obtained a proper trial in accordance with our laws, from the Local Executive Board.

The action of the Local Executive Board is final and binding, with the understanding that either party has the right to appeal to the Joint Council if one exists in the district. If there is no Joint Council then either party has the right to appeal from the decision of the Local Execu-
187 tive Board to the International Executive Board. If charges are against a member of the Local Executive Board, said member cannot act as a part of the Trial Board, but a substitute shall be appointed by the Joint Council if there is one in the district. If not, the General President shall delegate someone to select a member from any Local Union in the district to act on the Local Executive Board.

216 DEFENDANT'S EXHIBIT NO. 6.

Filed Aug. 18, 1938.

By-Laws of Milk Wagon Drivers.

(Cut)

Local Union No 753.
I. B. of T., C., S. and H. of A.
A. F. of L.
220 South Ashland Blvd.
Phone Monroe 7344

In Effect January 1st, 1934.

217 By-Laws

Section 1. This organization shall be known as the Milk Wagon Drivers' Union, Local 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America.

Preamble

Sec. 2. As almost every improvement in the condition of the working people was accomplished by the efforts of organized labor, and as the welfare of the individuals engaged in the milk industry can best be protected and advanced by their united action in one body, this organization was born Sept. 13, 1902, with the following objects in view:

Sec. 3. To organize all the workmen engaged in the milk industry and to educate them to co-operate in every movement which tends to benefit the organization; to impress upon our members and the public that our members must be honest, sober, intelligent and naturally adapted to the business; to teach them to take advantage of their industrial position and to build up and perfect an impregnable labor organization, and to secure the best possible conditions for our membership.

218 Sec. 4. To further these objects, we ask our members to be loyal trade unionists and to give this organization their full support and, although we do not believe in political action in our meetings, we ask that you study thoroughly the political situation and vote for the men who, not by promise but by action show that they are willing to stand for and fight the battles of the working class, and it is your duty to see that the following constitution and by-laws are enforced.

Organization

Sec. 5. This Union was organized for the purpose of bettering the conditions of the milk industry, and we therefore claim trade jurisdiction over all persons engaged in the craft, in Cook County and vicinity.

All drivers must become members of the Union; this includes owners and stockholders who drive or act as route inspectors.

Application for Membership

Sec. 6. The admission fee to this union shall be $100.00, subject to change by a two-thirds vote of the union.

Sec. 7. No person shall be accepted as a member other than a citizen or one who has made application for citizenship. Any person who desires to become a member of the local union must fill out the regular application blank and sign his name to it and have the same certified to by a member in good standing as voucher for the applicant's fitness to become a member, and after being passed upon it shall be filed by the Secretary-Treasurer for future reference.

No member of the Communist party shall be allowed to hold membership in this Local Union. If by false statement such member has obtained membership he shall be expelled. It is not necessary that the member admit such membership in the Communist party. If the Executive Board of this Local Union feels that the evidence tends to show membership in the Communist party, the member so charged with such membership shall be expelled from this Local Union.

Sec. 8. The applicant cannot be initiated until the initiation fee has been paid in full.

Sec. 9. The Business Representative may take applications without using the regular application blanks, but must give a receipt for all moneys collected, keeping duplicate of same

219 An applicant rejected by the union shall have his money returned providing he has not worked more than 30 days in the craft.

If applicant cannot hold his position on account of failure to give bond, or otherwise, and has not worked more than 30 days, or if he has to quit the craft before initiated, on account of sickness, the Executive Board shall have full power to return to him the initiation or any part of it they deem just.

An applicant cannot be initiated on days of election.

The Business Representatives having solicited a driver to join the union, and said driver continues to work at the craft three months longer and does not become a member, he cannot thereafter work at an organized plant and will not be taken into membership.

A member of Local 753, who works in a craft which is organized, or trying to organize, must join the organization and keep his dues paid.

Failure to comply with this by-law bars the member from returning to Local 753 or craft. This includes members who are out on Withdrawal Cards.

Quorum

Sec. 10. A quorum shall consist of seven members in good standing.

Meetings

Sec. 11. The regular meetings shall be held every second Thursday of each month.

Sec. 12. A special meeting can be called by the Executive Board but no business shall be transacted except that named in the call.

Dues and Assessments

The dues are six ($6.00) dollars per month, payable quarterly in advance.

The quarter begins Jan. 1st, April 1st, July 1st, Oct. 1st, but the dues are payable on and after Dec. 1st, March 1st, June 1st, and Sept. 1st, for the advance quarter.

Sec. 13. The union may make such assessments upon its members as the interests of the union shall demand. All assessments and fines shall be charged as dues and must be paid within thirty days after the levying of said fine or assessment but the Executive Board may further extend the time if considered advisable.

220 Sec. 14. And member working at the craft who is more than 90 days in arrears in dues shall stand suspended, and must appear before the Executive Board for disposition of the case.

Delinquencies

Sec. 15. Any member who has been suspended for the non-payment of dues, at a regular meeting, cannot be reinstated unless he pay a new initiation fee, and all the dues charged against him at the time of his suspension.

Fines

Sec. 16. Any member violating any of the rules of this union, shall be suspended from membership or fined at the discretion of the Executive Board.

If a firm is declared unfair by Local 753 the drivers must cease work immediately upon being notified to do so.

A member who continues to work on a struck job shall be fined, suspended or expelled at the discretion of the Executive Board.

Officers

Sec. 17. The officers of the union shall comprise the following: President, Vice-President, Recording Secretary, Secretary-Treasurer, three trustees. In case of a vacancy at any time the President shall appoint a member to act until an election can be held in the regular manner.

Branch Local 1 (Roseland) shall elect three delegates to a State Convention and one (1) delegate to International Convention, and the same for Branch 2 (Evanston). This in no way bars the members of Branch Locals having a vote at the election of main officers of the Union.

Sec. 18. Only members in good standing shall be elegible to hold office. Suspensions or expulsions for any cause, or absence from three succeeding meetings, without sufficient cause, shall forfeit any official position.

Sec. 19. Election shall be by Australian ballot, names to be placed alphabetically on the ballots.

Sec. 20. The President shall appoint tellers and judges who must not be candidates, who shall supervise the election

and count the ballots. Should more ballots appear than there were members voting, the election shall be declared invalid and another vote immediately had. Ballots whose reading is not plain shall be counted void.

221 Sec. 21. No member shall be eligible to hold office in this union who has not been a member of this union in good standing for one year and must show a good, clean record for the past five years. This includes delegates to conventions.

Any member running as a candidate for any elective position such as steward of a barn, delegate, or otherwise, shall and must have the qualification of attending two-third (⅔'s) of the meetings the year preceding any such election.

Dated attendance cards shall be issued only to members attending each meeting, same to be signed and returned to whomsoever the presiding officer may designate. There shall be no deviations from this rule. These cards to be preserved until such time as necessary to determine eligible candidate.

Sec. 22. Candidates receiving greatest number of votes cast, shall be declared elected.

Salaries of Officers

Sec. 23. The officers' salaries shall be fixed by the union at a regular meeting.

Duties of Officers

Sec. 24. The President shall preside at the meetings, appoint all committees, and transact such other business as the Union may direct; sign all orders on the Treasurer authorized by the Union. He shall see that the by-laws are enforced.

Sec. 25. The President shall call the meeting to order promptly, and in case of his absence the Vice-President shall act for him. If both are absent the Recording Secretary shall perform that duty and the Union shall proceed to elect a chairman, who shall conduct the meeting until the arrival of the proper officers.

Sec. 26. It shall be the duty of the Recording Secretary to keep correct account of the minutes.

Sec. 27. The Secretary-Treasurer shall receive and receipt for all moneys due the Union and deposit the same in such bank as the Union may direct, in the name of the Union; pay all bills sanctioned by the Union. He shall keep correct account between the local and its members,

and between the local and the International Union. He shall issue all working cards.

The Secretary-Treasurer must be bonded in a surety
222 company for the sum of not less than $5,000, the amount to be changed from time to time as the organization may require. Premium on bond to be paid by the Union.

Sec. 28. The trustees must turn in to the Union on the first meeting of each month, a correct audit of the Secretary-Treasurer's books for the previous quarter.

Business Representatives

Sec. 29. He shall attend all meetings of the local Union, Joint Council and Executive Board, and receive instructions from them on all business transactions requiring attention. He shall see that all members are in possession of a constitution and understand the rules. He shall attend to all controversies between the members and their employers and engage all legitimate means to adjust a settlement as soon as possible. He shall see that all members live up to the constitution, and collect all fines where the Steward fails to do so within 30 days after a fine has been assessed. He must enforce the by-laws. He shall have charge of organizing and take care of barns placed directly under his control.

Conductor

Sec. 30. The Conductor shall attend all meetings and assist the presiding officer in keeping order and take up the password.

Warden

Sec. 31. The duty of the Warden is to have charge of the inner door, and he shall not permit members without the password, or visitors to enter the hall without consent of the meeting. Should any intoxicated member be allowed to enter, the Warden shall be held responsible.

Executive Board

Sec. 32. The Executive Board shall have power to transact all necessary business of the Union between meetings and to them shall be referred all matters not otherwise disposed of. They shall decide all disputed questions in reference to the Constitution and By-Laws and perform such other duties as the union may require. Executive Board meetings shall be held on the first Thursday of each month.

Sec. 33. The Executive Board shall try all members whom charges have been preferred against, and report their findings at the next regular meeting of the Union.

223 The Executive Board should attend all meetings of the Teamsters' Joint Council.

Sec. 34. The delegates to the Chicago Federation of Labor should attend every meeting.

Stewards and Their Duties

Sec. 35. There shall be Stewards at all dairies except where the Executive Board has ruled otherwise.

Sec. 36. Any dairy not having a Steward and desiring one shall file a written petition with the Secretary-Treasurer, with the name of the member who is wanted for Steward. The petition must be signed by two-thirds of the members in good standing at said dairy. In event of the Steward not being able to look after the interests of the dairy which he represents, there shall be an assistant to him appointed by the Steward, for whom he must be responsible.

Sec. 37. The duty of the Steward shall be to see that the members live up to the rules of the union and of the barn.

He shall not be required to take up any grievance with the employer, but he shall notify one of the Business Representatives, who shall take care of same.

All Stewards shall be required to furnish bond, the union to pay one-half the premium, the Steward the other half.

The Stewart shall collect all money for dues and initiation fees, and turn in same at the office of the union not later than the tenth of each month, or as near that date as possible.

Stewards shall not be held responsible for any member who does not pay his dues on Steward's regular collecting day.

Any member who does not pay his dues to the Steward before he turns in his reports, shall, in order to be in good standing and entitled to sick and death benefit, pay his own dues at the office.

Stewards may hold office so long as they attend to their duties, and do not in any way violate their obligation to the organization.

In order to remove a Steward from office, charges must be preferred against him in writing, and said charges must be proven.

Charges may be for violation of his obligation, or some act in connection with the organization which would unfit him as a steward.

Sec. 38. Stewards shall be allowed compensation as follows:

224 Ten per cent (10%) on all moneys collected for initiation fees and dues.

Committees

Sec. 42. Special committees may be appointed by the President from time to time, as deemed necessary, who shall act promptly on matters referred to them, and who may be discharged at the will of the union.

All committees shall perform the duties assigned them within the time specified and report the result to the union in writing.

Working Rules

Sec. 43. Every member of this union shall be entitled to a fair and impartial trial by the Executive Board for all offenses involving fines, suspensions or expulsion. If fined by the Business Representative, he may appeal his case to the Executive Board.

Sec. 44. No member shall be placed on trial unless charges are preferred duly specifying the grievance and submitted to the Executive Board in writing and signed by two or more members. When this is done, the Secretary-Treasurer shall so notify the accused and the witnesses to appear before the Executive Board of the union, allowing reasonable time for accused to prepare his defense. Should the accused not appear for trial on the date specified in such notice he shall be fined, suspended or expelled as the Board may direct.

Sec. 45. Any member or members preferring charges against another member and not appearing against said member, after being notified to do so on the date of the trial, shall be fined not less than $2.50 for each offense, unless excused by the Executive Board.

Sec. 46. No member of the union shall report to anyone not a member of the private business of the union, on subject of fine not less than $5.00.

Sec. 47. No member of the union shall advise against belonging to the union or sympathize in any way with the proprietors to the detriment of the union.

Sec. 48. All members shall be entitled to appeal from the decision of the Executive Board to the Teamsters' Joint Council.

Sec. 49. A member may be fined from $5 up if proven that he stole from another member.

Sec. 50. No member of this union shall try to disrupt the union or injure it in any shape, form or manner, or persuade members to drop out of the union, on subject of fine of not less than $25.00.

Sec. 51. Any member of this union who is intoxicated or disorderly in the meetings shall be ejected from the hall by the Sergeant-at-Arms.

Members shall not be allowed to smoke in the meetings.

Sec. 52. Any member notified for special meeting and not appearing will have charges preferred against him.

Sec. 53. No member or members of this union shall be permitted to work with an expelled member of non-union driver, unless he signifies his willingness to join the union.

Sec. 54. All members must conform strictly to the schedule of wages.

Sec. 55. Any member found working below the scale of wages which is in the agreement entered into between the union and the proprietors and owners will, upon careful investigation, be fined or suspended.

Sec. 56. Drinking or smoking while on duty is forbidden by the contract with the employers.

Gambling while on duty absolutely prohibited. Men discharged for gambling, drinking or short books have no protection by the union.

Members are prohibited from distributing printed matter, pamphlets, etc.

Any member taking vacation money and no vacation shall pay to the union the two weeks salary.

Sec. 57. It shall be the duty of the Steward or members of each dairy to report or file charges against members breaking the foregoing rules.

Sec. 58. Members leaving the craft must take withdrawal cards in order to stop their dues; otherwise, they will be charged their dues the same as if they were in the craft. Neglect of members not getting withdrawal cards does not exempt them from paying their back dues when they return to the craft.

Sec. 59. The union reserves the right to cancel withdrawal cards, and should any person in legal possession of one violate the constitution or antagonize the principles of trade unionists, his withdrawal cards is by his own act, canceled, and he shall be suspended from the union.

Sec. 60. Any member using profanity in the meeting from any cause whatsoever, shall be fined the sum of $1.00.

Sec. 61. Any member who does not wear his union button in plain sight while on duty shall be fined five ($5) dollars.

226 Sec. 62. It shall be a violation of the rules for members to make two deliveries to their retail trade daily, stores included, and where members are found guilty of such violations they shall be fined not less than ten ($10) dollars for such offense.

The following will be considered as two deliveries to the trade:

1st. After one daily delivery has been made to a customer, to call back daily for bottles.

2nd. After one daily delivery has been made to a retail customer, to call back daily to collect, and leaving milk or cream to said customer.

3rd. After one daily delivery has been made to a retail customer, to call back daily to leave butter.

4th. After one daily delivery has been made to a retail customer, to have customer place a card or sign where it can be seen when passing, and to supply customer when such card or sign is posted.

It shall be a violation of the rules for any member to have a helper on his wagon who makes any deliveries. A substantial fine shall be imposed for each offense.

Two drivers supplying same customer unless one leaves certified only shall be treated as two deliveries.

Sec. 63. Drivers shall be allowed to call back to retail customers to leave butter twice weekly.

Sundays and holidays start early the year around, but wagons must be at car or barn by 11:00 a. m.

Sec. 64. Any member who delivers, solicits or collects, after the hours prescribed by this constitution, shall be fined or suspended at the discretion of the Executive Board.

Sec. 65. Any member preferring charges for violations of Section 65 shall see that the said section has been violated two days in succession.

The proprietor of saloon, poolroom, or the same with restaurant combined, who quits taking milk of a driver because he does not spend money therein, or on account of other business, cannot be supplied by any other driver.

Any driver who supplies such saloon, poolroom, or restaurant, after being notified by the Business Representative to quit, shall, by his own action, stand expelled from the Union.

Labor Day

Sec. 66. Labor Day shall be observed as Labor Day
227 by all the members, and the wagons must be off the street by 10:00 a. m.

Rules of Order

Sec. 67. The Chairman while presiding shall state every question coming before the Union before suffering debate thereon, and immediately before putting it to the vote shall ask, "Is the meeting ready for the question?" Should no member rise to speak and the meeting indicate their readiness, he shall rise to put the question. After he has risen no member shall be permitted to speak upon it.

Sec. 68. When the decision of the Chairman is appealed from, he shall state his decision and the reasons therefor from the chair. The party appealing shall then briefly state the reasons for the appeal, after which, without further debate, the question shall be put thus: Shall the decision of the chair stand as the judgment of the union?

Sec. 69. Every member, while speaking, shall adhere to the question under debate, avoid all personality and indecorous language, as well as any reflection on any member thereof.

Sec. 70. Any member, while speaking, being called to order by another, at the request of the chair, shall cease speaking and be seated until the question of order is determined.

Sec. 71. No member shall speak more than once on the same question until all the members wishing to speak shall have an opportunity to do so, nor more than twice, without the permission of the chair.

Sec. 72. This constitution and by-laws can be amended as follows: Any three members may, over their signature, present to the Union, at any regular meeting, any amendment or alteration to this constitution. And after being read at two regular meetings shall lay over to the next regular meeting, when it shall be voted upon. If the amendment or alteration receives a two-thirds vote it is adopted.

Sec. 73. Any member may call for the division of a question when the sense will admit it.

Sec. 74. The following motions shall have precedence in the order herein named: 1st, to adjourn; 2nd, to close debate; 3rd, to take the previous question; 4th, to lie on the table; 5th, to postpone indefinitely; 6th, to postpone to a definite time; 7th, to refer; 8th, to amend. The first four named shall be decided without debate.

Sec. 75. Every member present shall vote on all 228 questions before the meeting unless personally interested; a motion to excuse a member from voting shall be put without debate.

Sec. 76. No member shall enter or leave the hall during ıe reading of the minutes, admission of new members, in-:allation of officers, or the taking of a question by yeas nd nays; and no member shall be allowed to leave the hall ithout the permission of the presiding officer.

Sec. 77. When a motion has been declared carried or lost y acclamation, any member, before the meeting proceeds) other business, may call for a division.

Sec. 78. The yeas and nays may be called for by two ıembers, and upon the assent of one-third of the members resent, shall be so taken.

Sec. 79. A motion to adjourn having been put and lost, hall not be in order again, providing there is further busi-ess before the meeting, until 15 minutes has elapsed.

Sec. 80. All business done in this union shall be strictly ecret.

Sec. 81. All other proceedings in debate, not herein pro-ided for, to be guided by Robert's Rules of Order. One ap of the mallet shall call to order, three taps to rise.

Order of Business

1. Opening.
2. Roll-call of officers.
3. Reading of minutes of previous meeting; adoption f same.
4. Communications and bills.
5. Initiation.
6. Receipts and expenditures since last meeting.
7. Reading communications from headquarters.
8. Reports of delegates and committees.
9. Does anyone know where employment can be ob-ained, or a brother out of employment?
10. Unfinished business.
11. New business.

229 DEFENDANT'S EXHIBIT NO. 7.

By-Laws
Governing
Sick and Death Benefits
of
Milk Wagon Drivers
(cut)
Local Union No. 753
I. B. of T. C., S. & H. of A.
220 So. Ashland Blvd.
In Effect January 1, 1936
Filed Aug. 18, 1938.

230 Milk Wagon Drivers

The following By-Laws governing Sick and Death Benefits were approved at Regular Meeting of Milk Wagon Drivers' Union, Local No. 753, on December 12th, 1935, and ordered into effect January 1st, 1936, and cancels all previous laws pertaining to Sick and Death Benefits.

Sec. 41. A person cannot be a member of No. 753, until initiated. He is obligated to attend to his own initiation and no other person can be held accountable.

231 Sec. 42. A new member, by initiation, acceptance of transfer, or by reinstatement by local allowing back dues, must be a member one year, before he is entitled to death benefits. After twelve (12) months to the end of twenty-four (24) months the death benefit will be $100.00, from twenty-four (24) months to the end of thirty-six (36) months, $300.00, thereafter $1,000.00. A death benefit will be paid upon presentation of a death certificate, providing the member was in good standing, six months prior to sickness or death.

232 K. A member by initiation, acceptance of transfer, or by reinstatement by local allowing back dues, must be a member one year before he is entitled to sick benefits. A member shall then be entitled in case of sickness, to no more than a maximum of twelve weeks of sick benefit after the first year.

L. And each additional year, up to and including the tenth (10) year of continuous service, will entitle member to an additional twelve (12) weeks of benefit. After ten (10) years continuous employment, in good standing, the member will be entitled to sick benefit the full time he is sick. Sick benefits shall be paid only when member is in good standing six months prior to date of sickness, except as provided in following paragraph.

N. The sick benefit shall be $20.00 per week after the first week of illness or accident, regardless of whether the individual be single or married, or has or has not children.

234 And on, to wit, the 18th day of August, 1938, came the Defendants by their attorneys and filed in the Clerk's Office of said Court their certain Exhibit No. 8, in words and figures following, to wit:

235 DEFENDANT'S EXHIBIT NO. 8.

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois,
Eastern Division.

Edgewater Dairy Company, a corporation, Joliet Dairy Products Company a Corporation, Anton Michalek and Joseph Wagner, Jr., *Plaintiff.* *vs.* Henry A. Wallace, Secretary of Agriculture, etc., Homer J. Cummings, Attorney General of the United States, etc., Dwight H. Green, United States District Attorney, etc., Frank C. Baker, Market Administrator, etc., *Defendants.*	Bill. In Equity No. 13878.
Henry A. Wallace, Secretary of Agriculture, Dwight H. Green, United States District Attorney for the Northern District of Illinois, Eastern Division, *Cross-Plaintiffs.* *vs.* Edgewater Dairy Company, Inc., Joliet Dairy Products Company, Inc., Anton Michalek and Joseph Wagner, Inc., *Cross-Defendants.*	Cross-Bill.

MEMORANDUM.

This cause comes on to be heard upon the motion of the plaintiffs and intervening petitioners for an injunction restraining the enforcement as against them of the "License for Milk—Chicago Sales Area, as Amended," and on the motion of the cross-plaintiffs for an injunction against the plaintiffs and intervening petitioners restraining the violation of said license.

One question before the court concerns itself with the delegation of powers by the Congress to administrative officers. The other question is, Is the action of the Secretary of Agriculture, in issuing the license in question,

found within the powers granted to the Federal Congress in the Commerce Clause of the Constitution? Closely related to this second question is the question, Does the license impinge upon the powers reserved to the States by the Tenth Amendment to the Constitution?

236 The first question, that relating to the delegation of legislative power, was not considered at length upon the oral arguments, presumably because of the court's expressions in the case of *U. S.* v. *Suburban Motor Service Corporation*, 5 Fed. Supp. 798. The question is an important one. Legislative power may, of course, be delegated to administrative officers if the Congress makes a sufficient statement of its policy for the guidance and control of those officers and for the information of those to be affected by the action of the administrative officers. The general subject of the Agricultural Adjustment Act is agricultural commodities prices, and it would seem that one ought, after investigation, to be able to say what the law of the United States is on the subject at a given moment and, with reasonable certainty, what, barring action by the Congress, it is going to be in the future. A person who contemplates the purchase of a dairy farm or a herd of milk cows ought to be able to determine, with reasonable certainty, what laws of the United States or rules and regulations made in pursuance of such laws, barring action by Congress, will regulate or prevent the sale of the milk, cream and butter he proposes to produce. The policy of Congress is stated in the Agricultural Adjustment Act in general language. On behalf of the plaintiffs and intervening petitioners and cross-defendants it is contended that the language is so general that no man can tell what can be done under the act, if valid, or when it will be done. That there is some force in their contention that no one can tell when action will be taken must be conceded when it is observed that the Amended License in question in this case was executed and promulgated on May 31, 1934, to be affective "on and after 12:01 A. M. Eastern Standard Time, June 1, 1934."

However, courts have uniformly been loath to declare acts of Congress unconstitutional because of the delegation of legislative power, and this court feels that it should not hold the act invalid on that ground.

237 The question as to whether or not the action taken by the Secretary of Agriculture, in issuing the license in question, is within the grant of power of the Federal Congress found in the Commerce Clause of the Constitu-

tion was argued by counsel for the Agricultural Adjustment Administration with ability, and logically and persuasively. The difficulty in which the court found itself was that when it went out to the end of the doctrine of delegation of legislative power and then proceeded with counsel in their argument along the doctrine of the power of Congress to regulate interstate commerce, the court came to a point where it felt that it had no solid ground upon which to stand, though it seemed to have come to the point where it found itself logically and without wandering into by-paths. This feeling led the court to consider with care the question as to whether or not the power which has been exercised by the Secretary is within the grant to Congress under the Commerce Clause. Congress itself, so far as the issuing of licenses is concerned, tried to stay within this grant of power, since it provided, in Section 8 of the Agricultural Adjustment Act, that:

"The Secretary of Agriculture shall have power * * * to issue licenses permitting processors, associations of producers, and others to engage in the handling, *in the current of interstate or foreign commerce,* of any agricultural commodity or product thereof, or of any competing commodity or product thereof."

It is said by the Government that 40% of the milk which come into the Chicago sales area is produced in states other than Illinois, and that it is impossible to control the distribution in the Chicago sales area of milk produced outside of Illinois unless the distribution of all of the milk coming into that area is controlled. The plaintiffs and intervening petitioners and cross-defendants, on their part, say that all of the milk which they buy and sell is produced in Illinois, and that it is purchased by them there and sold there. That this is the fact is not seriously disputed by the counsel
238 for the Agricultural Adjustment Administration, though there is an affidavit on file which indicates that a part of the milk sold by one or more of the plaintiffs or intervening petitioners and cross-defendants is produced outside of the state of Illinois. But when the court examines the Amended License in question in this case, it seems to the court that all of these facts are immaterial.

The amended License has three principal purposes, and no others. The first principal purpose is to fix the minimum price at which producers of milk may sell their product. If it be said that the purpose of the license is not to fix the price at which producers may sell their product but is to fix the price which distributors must pay, the answer

is that, while the "License for Milk—Chicago Sales Area, as Amended" is a very complicated document, covering 19 type-written pages, and a considerable portion of those 19 pages relate to price and the determination thereof, yet the price to be paid to any person other than a producer is, so far as the court can discover, mentioned but once, and then in paragraph number "12" of Section A, of Exhibit A, where the price which a distributor must pay to a distributor for milk and cream for Class II use is mentioned and fixed, but even here the purpose carries back to production. The purpose of the paragraph is apparently to give a "two cents per pound of butter fat" advantage to the producer over the distributor who may have Class II milk for sale. The affidavit of E. W. Gaumnitz, Economic Adviser to the Dairy Section of the Agricultural Adjustment Administration, states in respect of paragraph "12":

"This provision is for the purpose of aiding the administration and enforcement of the Class II price to producers."

The second principal purpose of the license is to limit the production of milk by producers thereof by means of assigning to them so-called "bases," and the third principal purpose is to charge the cost of administration under the license to the producers by requiring the distributor to hold back from the producer one cent per hundred weight of milk in the case of producers who are members of the Pure Milk Association (an association of producers) and four cents per hundred weight in the case of producers who are not members of the Pure Milk Association. All other purposes to be found in the license are merely inci-
239 dental to these three principal purposes. In other words, as it seems to the court, the distributor of milk is, by means of the license, made the agency of the Government for the regulation of the production of milk.

It seems clear that the production of milk is not "interstate commerce," and the court's best judgment is that the production of milk does not occur in the "current of interstate commerce," and that it does not "affect interstate commerce" in the sense that those clauses have heretofore been used in the cases. The "License for Milk—Chicago Sales Area, as Amended" in question in this case, seems to the court to be an attempt by the Federal Government to use milk distributors for the purpose of doing what, under the Commerce Clause of the Constitution, the Federal Government has no power to do, and what, under the Tenth Amendment of the Constitution, is reserved for action by the States or the people.

The motion of the plaintiffs and intervening petitioners for an injunction will be granted, that of the cross-plaintiffs for an injunction will be denied.

Counsel may prepare, and on due notice present, a draft of an appropriate order.

John P. Barnes,
Judge.

June 26, 1934.

240 DEFENDANTS' EXHIBIT 8.

Certified Copy D. C. Form No. 30

United States of America
Northern District of Illinois } ss:

I, Henry W. Freeman, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that the annexed and foregoing is a true and full copy of the original Memorandum, filed June 26, 1934, in the case of Edgewater Dairy Company, a corporation, *et al.* Plaintiffs, *vs.* Henry A. Wallace, Secretary of Agriculture, etc., *et al.* Defendants, Henry A. Wallace, Secretary of Agriculture, *et al.* Cross-Plaintiffs, *vs.* Edgewater Dairy Company, Inc., *et al.* Cross-Defendants, —In Equity, No. 13878, now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago this 11th day of June, A. D. 1938.

Henry W. Freeman,
(Seal) *Clerk.*

241 And on, to wit, the 18th day of August, 1938, came the Defendants by their attorneys and filed in the Clerk's office of said Court their certain Exhibit No. 9, in words and figures following, to wit:

242 DEFENDANTS' EXHIBIT 9.

State of Illinois } ss.
County of Cook }

IN THE SUPERIOR COURT OF COOK COUNTY.

Complaint in Equity

Filed Aug. 18, 1938, Henry W. Freeman, Clerk.

Josef Wagner, Sr. and Lakeview Dairy Company, a corporation,

Plaintiffs,

vs.

International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers Union, an unincorporated association, Daniel Tobin, National President and Thomas L. Hughes, National Secretary of such unincorporated association, in a representative capacity, Milk Drivers' Union of Chicago, Local 753, an unincorporated association, Robert G. Fitchie, James Kennedy, Steve Sumner, F. Ray Bryant, Albert C. Richards, Joseph L. Patterson, Fred C. Dahms, its officers, and in a representative capacity of said incorporated association, Chicago Teamsters, Chauffeurs and Helpers Union of Chicago and Vicinity, Michael Galvin, as President and Secretary, Milton Booth, as Vice President, Thomas Connely, Thomas Doyle, Thomas Keegan, Larry Monahan and William Carron, as Trustees of said unincorporated association, and in a representative capacity, Chicago Milk Drivers and Vendors Union, Local 718, an unincorporated association, Edward Schroeder, James Piscule, Stanley Sitkowski and Gustav Krnak, individually and as members and as representatives of the membership composing such unincorporated association, William Wohlers and M. Mouske, individually and in a representative capacity,

Defendants.

COMPLAINT IN EQUITY.

To the Honorable, the Judges of the Superior Court of Cook County, Sitting in Chancery:

The above named plaintiffs, complain against the above named defendants, jointly and severally, and allege:

244 5. That the plaintiff, Lakeview Dairy Company,

a corporation, is a body corporate, duly organized and existing under and by virtue of the laws of the State of Illinois, with its principal place of business and office at 542 Grant Place, in the City of Chicago, County of Cook and State of Illinois; that it conducts a dairy and 245 pasteurization plant, where it handles milk and other dairy products in accordance with the requirements of the Statutes of the State of Illinois and ordinances of various municipalities, in which it transacts business; that it adopts the allegations of this complaint, with regard to the general description of the business conducted by Josef Wagner, Sr., as a sufficiently accurate description of the business enterprise operated by it without repeating same in its behalf; that the business is worth approximately One Hundred Thousand Dollars ($100,000.00); that the shareholders, officers and employees thereof, have been enabled to secure profits, salaries and wages out of the business.

6. That there is now in full force and effect a statute of the State of Illinois providing for pasteurization of dairy products and there are also ordinances of various municipalities of the State of Illinois, likewise regulating pasteurization of dairy products and regulating the manner in which such dairy products are to be handled; that some of such regulations affect the vehicles in which dairy products are hauled and as well the persons employed in such occupations and buildings, machinery and receptacles used in such processing are subject to inspection. That as a result of such regulation, raising the standard of the quality of dairy products, it has become necessary to invest capital in such business and to reorganize the conduct thereof; that a number of years ago there were several thousand persons engaged in the retailing of dairy products to consumers, while now there are less than Two Hundred Fifty (250) persons engaged in the wholesale purchase and sale of dairy products in the City of Chicago; that formerly milk was placed in cans and delivered by the individual farmer to a railroad car at a station and such car was then hauled to the largest centers of population; that formerly milk producers would seek purchasers of such milk among persons who then retailed such milk by selling the same direct from the can or distributing such milk from house to house or from place to place where it would be consumed; that now milk is gathered by collectors from among farmers in a local dis-246 trict, which milk is brought to a central establishment, there to be prepared for shipment and use in

Chicago and vicinity, or is delivered for shipment in trucks carrying a large number of cans which milk is then brought inside of Cook County, and there properly prepared for disposition to retail or in quantities, as is now required to be done by statute and ordinance; that such trucks or vehicles carrying milk in tanks are operated by owners of milk dairies, or their employees or by persons who bring such milk in large tanks or trucks for resale to persons who operate a pasteurization plant and place such prepared milk and other dairy products in bottles for retail disposition or delivery from house to house.

8. That by reason of the changes in the conduct
247 of the dairy business, as stated in this complaint, whereby the rights and interests of the farmer producing dairy products have been affected and the rights and interests of persons employed by him on his farm and the rights and interests of those engaged in the purchase, transportation and disposition of dairy products have been changed and developed and different methods of final disposition of dairy products have been adopted by those engaged in selling dairy products, a conflict of interest has arisen between such individuals. Some of the corporations which are engaged in the dairy business in Chicago and vicinity have endeavored to increase their business by absorbing small dairy establishments of the County of Cook, in order to reduce, as they claim, improper competition; they have purchased the business of persons selling dairy products at retail, by payment of money and stock in the purchasing corporation. In many instances, these places of business have been abandoned but the capitalization has not been decreased.

249 11. Both the plaintiffs states that there is not now any actual dispute between employees of the plaintiffs as to the matters described in this paragraph of the complaint, but recently a disagreement has arisen between plaintiffs and other persons similarly situated, as employers and an organization known as International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers Union and Milk Wagon Drivers' Union of Chicago, Local 753, which organizations are composed of persons who are employees of individuals and corporations engaged in conducting dairy plants, pasteurization plants and in the business of handling milk and dairy products and compose principally of persons engaged in operating vehicles used in the conduct of such business, and the conditions concerning such disagreement which have brought about such disagreement are hereinafter more

fully set forth; that recently employees of the plaintiffs and of other proprietors of dairy plants and pasteurizing plants have become members of an association of working men or trade or labor union under the name and style of "Chicago Milk Drivers and Vendors Union, Local 718;" that said union is not incorporated under any law of the State of Illinois or any other State as far as plaintiffs are able to ascertain.

250 That since the year 1908 there has existed in the City of Chicago an unincorporated association under the name and style of "Chicago Teamsters, Chauffeurs and Helpers Union of Chicago and vicinity," which is a central organization composed of representatives of various unions composed of persons who are engaged as operators of vehicles and of persons working in and about such means of transportation or haulage as are resorted to by proprietors of various businesses or owners of vehicles used in the transportation and said Local Union 718 is affiliated with the last mentioned organization.

253 15. That plaintiffs are advised and informed, and so believe the fact to be, state that since the year 1908, there has existed in the City of Chicago, an unincorporated association under the name and title of "Chicago Teamsters, Chauffeurs and Helpers Union of Chicago and vicinity", the members of which are associated in various subordinate labor or trade unions or associations of working men and "Chicago Milk Drivers and Vendors Union, Local 718" is affiliated with other unions through its representatives in a central governing body of said Chicago Teamsters, Chauffeurs and Helpers Union of Chicago, with a total membership of many thousands, and with a membership of many hundreds in said Local Union 718; that such organization is a bona fide labor union, governed by its own articles of association, by-laws, rules and regulations; that such organization is not affiliated with the American Federation of Labor; that Local

254 Union 718 permits membership to persons known as "Vendors", while Local Union 753 does not accept such persons into membership; that Michael Galvin is President and Secretary of the governing body of the Chicago Teamsters, Chauffeurs and Helpers Union of Chicago and vicinity; that Edward Schroeder, James Piscule, Stanley Sitkowski and Gustav Krnak are members of said Local Union 718; that Edward Schroeder, James Piscule, Stanley Sitkowski and Gustav Krnak are employed with other members of said Union by the plaintiffs herein; that

the persons named in this paragraph as officers and members of said Chicago Teamsters, Chauffeurs and Helpers Union of Chicago and vicinity and of Chicago Milk Drivers and Vendors Union, Local 718 sufficiently represent each of said unincorporated associations and the members thereof with regard to the rights, claims and privileges of said unincorporated associations and the membership thereof, to enable this Court to determine and dispose of the controversy disclosed in this complaint and the plaintiff pray that such unincorporated association may be made a defendant herein through its representatives above named according to the principles of equity practice.

16. That as the result of the existence of the period of depression as the same has been commonly known to exist in the United States, and particularly as the same has affected the dairy industry in the States of Illinois, Wisconsin, Michigan and Indiana and as it has affected the consumers of dairy products, the consumers of dairy products have complained of the prices charged for dairy products by the dealers and distributors of the class described in certain paragraphs of this complaint and named in the schedule attached to this complaint and farmers likewise have complained of the prices received by them for such products, but the consumers have not been able to cause a reduction of the price at which such dairy products are sold, because there was in existence a combination between the Pure Milk Association, acting in behalf of dairy farmers and the existing dealers or distributors operating in the County of Cook and the 255 members of Local Union 753. as represented by its business agents and officers, whereby the price of dairy products was set and controlled by the united action of the persons above named; that within the last several years, a number of persons have entered into the business of purchasing dairy products from dairy farmers or producers, which, after pasteurization have been disposed of at retail and wholesale in opposition to the persons theretofore controlling the price situation in the sale of dairy products in the County of Cook; that the persons so engaged, have been commonly known as "Independent dairies" or pasteurization plants; that various persons have been induced to engage in the disposition of dairy products from store premises, which store premises have been commonly called "Independent stores" or "Cash and carry stores;" that the anxiety of the consumers to secure dairy products at a lower price than that at which

the old established dealers had sold such dairy products, has induced many thousands of consumers to patronize such independents or cash and carry stores and places of business where they could purchase milk in bottles and other dairy products in packages at a lower price than that set by the large incorporated dairies if they came to the stores, made their purchase there and carried such purchased article to their respective homes, and this course of business has become very objectionable to the large corporations, which had theretofore organized and who are maintaining a staff of house to house distributors who operated vehicles to distribute milk in bottles and dairy products in packages; some of the employees of such dealers being members of Local Union 753, represented by said Steve Sumner and his associates.

257 That plaintiffs believe the fact to be that there are several thousand places of business in the City of Chicago, in the County of Cook where milk, cream and buttermilk in bottles may be purchased at retail and other dairy products may be purchased in small package form; that many of such business places obtain their supplies of dairy products from Bordens, Bowmans, Wieland, Wanzer and other of the persons named in the schedule attached to this complaint, being of the class of business enterprises that have developed the sale of milk by house to house delivery in their own vehicles; while other persons are purchasing dairy products from that class of wholesale dealers known as the "Independents" who are not affiliated with those wholesalers who have an association of their own for the purpose of regulating the sale price of such dairy products; that the cost of retail delivery from house to house by means of vehicles and drivers thereof and their helpers makes a difference in the sale price, as such cost must be paid either by the consumer or the

258 wholesale distributor, and this cost amounts to about Three Cents (3c) per bottle; that this class of wholesalers or dealers in dairy products requires the storekeepers to sell dairy products at the same price as is charged by the "Large dealers" to consumers at their homes; that the storekeeper secures his dairy products at a price which is made uniform by some sort of an agreement between the wholesale dealers and those affiliated with them, and this difference is the profit which the storekeeper or retail dealer makes on each sale; that this class of business is conducted on a sort of a "Credit" basis whereby the wholesale dealer or distributor holds his milk wagon driver responsible for any losses due to non-collec-

tion of accounts for milk sold, and such uncollected amounts are deducted from the wages or compensation paid by this class of wholesale dealer or distributor to employees who are mostly members of the union made a defendant in this case, through its representation by said Steve Sumner and his associated defendants in a representative capacity; that as stated in a preceding paragraph of this complaint, a large number of people in Chicago and its vicinity prefer to save the cost of the house to house delivery and desire to purchase their dairy supplies at retail from the "Independents" or cash and carry stores and by paying cash therefor, and carrying their own purchases to their respective home, such buyers secure such dairy products at a reduced price, and this sort of competition has brought about a business dispute which has, in a measure, reacted upon the persons who are engaged in operating motor or delivery vehicles in the distribution of dairy products as described in this complaint.

260 20. That plaintiffs charge the fact to be that Steve Sumner, as a representative of Milk Wagon Drivers' Union, Local 753, with offices at 220 South Ashland Boulevard, Chicago, Illinois, has visited the place of business of plaintiffs and the business places of other persons engaged in conducting a wholesale dairy product business and pasteurization plant for the purpose of inducing employees of such establishments to join said Local Union 753 and thereby make such business place or establishment of the type denominated by said Union as a "Union labor plant." Plaintiffs state that they and the proprietors of other establishments of the same kind informed said Sumner that they had no objection to having their employees become members of labor unions and that their employees could join Local Union 753, if they desired to do so, but said Sumner and other business agents of said Local Union 753 refused to accept all the employees of plaintiffs and other independent distributors as members of said Union, because the plaintiffs and others similarly situated, were conducting their business differently from those wholesale dealers and distributors who had an agreement with Local Union 753 as to the method of conducting the business and making sales to vendors, independent stores and cash and carry stores and upon the refusal to accept employees of plaintiffs and others similarly situated as members of Local Union 753, the employees of plaintiffs and other independent wholesalers and pasteurizers did become

members of Local Union 718, in consequence whereof
261 the plaintiffs and others similarly situated and their
employees and the independent stores and cash and carry stores have become involved with Local Union 753, as to the manner in which the employers and storekeepers shall conduct their respective business establishments.

21. Plaintiffs charge that said Milk Wagon Drivers' Union, Local 753 and the officers and members thereof,
have recently undertaken to aid the wholesale distrib-
262 utors, who are associated with them, as stated in this
complaint, to destroy competitors of such combination and to put out of business the independents and cash and carry storekeepers by declaring a strike against the independent distributors, although none of the members of Milk Wagon Drivers' Union, Local 753 were in the employ of independents engaged in the pasteurization of milk and in conducting the dairy business on a wholesale basis, nor of the cash and carry dairy products, retail establishment or of many hundreds of grocery storekeepers and other storekeepers who deal in dairy products at retail and said strike was called solely for the purpose of compelling the parties in interest, as herein described, to accede to the method of business followed by the wholesale dairy producers and distributors named in this complaint and for the purpose of destroying the employees' membership of plaintiffs and those similarly situated and against such unlawful device, scheme, agreement or conspiracy, plaintiffs have no adequate remedy at law.

22. Plaintiffs charge that said Local Union 753,
263 its members and officers, in order to make their strike
effective, have proceeded to picket customers of the independent dairy products distributors and have assaulted various persons engaged in distributing dairy products, who are not members of said Local Union 753, and have threatened storekeepers if they continue to patronize any establishments, which do not employ members of Local Union 753, and have thereby brought about a condition in the conduct of the dairy business, which is not a wage dispute and does not involve any betterment of the condition of employees or laborers and such conduct is unlawful and should be restrained by an injunction of this Honorable Court.

24. Plaintiffs further charge that the City of Chicago has not a sufficient Police Force to be able to properly protect the independent dairy product producers and their employees and the independent cash and carry store own-

ers and grocery storekeepers, whereby persons may be protected and their property protected from damage; that the Sheriff of the County of Cook in the district out-
264 side of the City of Chicago is likewise unable to furnish sufficient protection for the persons engaged in conducting business in the manner described in this complaint, and it is therefore necessary to secure an injunction restraining the perpetrating of the wrongful acts herein complained of as perpetrated by members of Local Union 753 and their unknown adherents and associates.

25. Plaintiffs further allege that it is an unlawful act for the members and officers of Local Union 753, their agents and representatives and unknown associates and co-conspirators, to undertake to influence members of other labor unions and customers of the independent dairy product distributors and of the independent cash and carry stores and grocery storekeepers, who deal in dairy products, from patronizing the persons with whom they have heretofore done business as purchasers of dairy products, to cease such patronage upon the pretense that as loyal union members and persons desiring a higher wage for service, that they should support Local Union 753 in its claim that there is a labor dispute in effect and against such acts, plaintiffs for themselves and their associates, pray relief by an injunction of this Honorable Court.

26. That the Supreme Court of the State of Illinois has recently rendered an opinion in the case of the People of the State of Illinois *vs.* Thomas Fitzpatrick, Edward Oenning and Joseph Kennedy, being a Writ of Error proceeding to the Criminal Court of Cook County, wherein said defendants were charged with arson and other crimes and the verdict of guilty was affirmed; that from the record of such cause, or an abstract thereof, which will be produced upon the hearing of this Court, it will fully appear that a cash and carry store located at 3300½ Southport Avenue, in the City of Chicago, was bombed and partially destroyed by said defendants; that all of said defendants were employees of the Bowman Dairy Com-
pany, one of the persons whose name appears in the
265 schedule attached to this complaint; that the Meadowmoor Dairy Company is an independent dairy product distributor and supplied dairy products to the milk store at 3300½ Southport Avenue, in said City;

That plaintiff, Josef Wagner, Sr., greatly fears that he and his family and employees, at and about the place of

business, and his employees at their respective homes and at places where they are engaged in performing their duties in carrying on the business of this plaintiff, and particularly at the cash and carry stores and independent storekeepers dealing in milk and dairy products, will be assaulted and subjected to grave personal injuries and that the trucks and property of such plaintiff will be damaged or destroyed by members of Local Union 753, their associates, confederates and supporters and he verily believes that they will carry such threats into effect unless restrained from doing so, by a Writ of Injunction of this Honorable Court, aptly worded, to prevent the commission of such wrongs.

267 The Foregoing Premises Considered, plaintiffs demand judgment and decree of this Honorable Court against the persons named as defendants, or either of them, in the foregoing complaint, as follows:

(1) That a Writ of Summons issue herein, as provided by law;

(2) That a temporary Writ of Injunction issue herein, aptly worded and directed as to the Court shall seem fit and proper after a hearing of the issued joined, to be in full force and effect until a final hearing may be had

268 herein, and a final decree entered and that such temporary Writ of Injunction issue without bond for the good cause shown in the complaint;

(3) That the issues of law and fact be adjudged in favor of plaintiffs and that a final decree be entered, granting to the plaintiffs, and each of them, the relief sought herein;

(4) That an Interlocutory Decree may be entered herein, providing for the appointment of a Receiver of the property and business of the Milk Wagon Drivers' Union Local 753, to be held by such Receiver and operated under the direction of this Court, if necessary, until a finel decree may be entered in this cause;

(5) That all proper writs may issue herein and that plaintiffs may have all such other, further and different relief in the premises as to the Court may seem fit and proper, according to the principles of equity practice.

.....

Lakeview Dairy Company, a corporation,
By: .....

.....

Attorneys for Plaintiffs.

274 And on, to wit, the 18th day of August, 1938, came the Defendants by their attorneys and filed in the Clerk's office of said Court their certain Exhibit No. 10, in words and figures following, to wit:

275 DEFENDANTS' EXHIBIT NO. 10.

State of Illinois } ss.
County of Cook }

IN THE DISTRICT COURT OF THE UNITED STATES.

For the Northern District of Illinois,

Eastern Division.

Meadowmoor Dairies, Incorporated, a corporation,

vs.

Milk Wagon Drivers' Union of Chicago, Local 753, a voluntary unincorporated association, Robert G. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, Albert C. Richards, Joseph L. Patterson, Louis Misch, Harry Saltzman, and David Riskind.

In Equity No. 14068.

DECREE.

This cause came on to be heard at this term on the motion of the solicitor for the defendants to dismiss this cause in accordance with the findings of fact and conclusions of law entered herein on this day, and was argued by counsel, and thereupon, upon consideration thereof, it was

Ordered, Adjudged and Decreed, as follows: viz:

First: That the amended Bill of Complaint herein be and the same is hereby dismissed on the merits because of want of equity.

Second: That the said amended Bill of Complaint herein be and the same is hereby dismissed for want of jurisdiction, with prejudice against another action upon the same grounds.

276 Third: That the above and foregoing cause be and hereby is dismissed on the merits because it does

not present such a substantial federal question as to vest this court with jurisdiction in the premises.

Fourth: That the defendants jointly have and recover from the complainant the sum of Twenty Two Hundred Eighty Four and 50/100—Dollars, being the costs and charges laid out and expended herein by the said defendants jointly, in addition to their respective costs to be taxed by the Clerk of this court, and that Execution issue therefor. All costs of this proceedings be taxed against complainants.

(To which ruling and Decree as above set forth and each of them, the complainant excepts, and exceptions are allowed.)

Enter: nunc pro tunc, as of February 18, 1935.

Barnes,
District Judge.

Dated at Chicago, Illinois, March 5, A. D. 1935.

Filed Aug. 6, 1938.

89 And on, to wit, the 6th day of August, 1938, came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court their certain Motion to Strike, in words and figures following, to wit:

90 DISTRICT COURT OF THE UNITED STATES OF AMERICA.

* * (Caption—16073) * *

PLAINTIFF'S MOTION TO STRIKE.

To the Honorable Charles A. McDonald, Master in Chancery of the District Court of the United States:

Now come the Plaintiffs, Lake Valley Farm Products, Inc., a corporation; Amalgamated Dairy Workers Local, Industrial Union No. 819, a voluntary unincorporated Association; Josef Wagner, doing business as Wagner Dairy Products; Lake View Cooperative of Watertown, Wisconsin, an Agricultural Cooperative Corporation of the State of Wisconsin, by Arthur R. Seelig, their attorney, and move that the testimony and evidence referred to hereinafter be stricken from the transcript of evidence of the hearings heretofore had before the said Master in Chancery herein, the said portions of said transcript being as follows:

91 1. Beginning at line 5, page 118 and ending at page 119, line 5, all reference to Meadowmoor Dairy Case for the reason that the said reference refer to a different

proceeding, are of a scandalous nature, irrelevant and immaterial and do not tend to prove or disprove any of the issues of the case.

2. The following statement of Mr. Riskind appearing at Page 150: "We always have that difficulty, with these men. They never remember the name." That said statement is scandalous and prejudicial and incompetent.

3. The statement of Mr. Riskind appearing at the fourth line from the bottom at page 314 and ending on the seventh line of page 315, for the reason that the same is prejudicial, conjectural and incompetent.

4. The statement of Mr. Riskind commencing on the sixth and ending on the thirteenth line of page 320, referring to ownership of the Wagner Dairy, for the reason that said statement is improper and incompetent. The statement of Mr. Riskind appearing at line 3, to line 6, of page 338, concerning the testimony of witnesses for the reason that said statement is prejudicial, scandalous and improper.

5. The statement of Mr. Riskind, at page 347 being: "I can not contro' myself on this. That is a deliberate falsehood." For the reason that the same is scandalous, prejudicial, improper and incompetent.

6. Lines 5, to 17 inclusive of page 363, of the transcript, starting with the words: "And would you be willing to abide by, etc.," for the reason that the question is based upon conjecture, is improper, irrelevant and immaterial and does not tend to prove or disprove any of the issues of the case.

7. Line 5, page 366 to line 3, inclusive on page 367, for the reason that the same is based on conjecture is irrelevant and immaterial and does not tend to prove or disprove any of the issues of the case.

92 8. Commencing with Line 13, page 378, and ending with Line 14, page 380, for the reason that the same purports to involve a proceeding other than the present proceeding and is irrelevant, incompetent and immaterial and does not tend to prove or disprove any of the issues of the present case.

9. Lines 2 to 11, inclusive of page 398, commencing with the words "Isn't it a fact you had a conversation * * *, etc", for the reason that said conversation was privileged, as between attorney and client, is irrelevant and immaterial and does not tend to prove or disprove any of the issues of the present case.

10. The entire pages 424 and 425 relating to discussions between Wagner Dairy Products and its counsel and concerning the signing of the Bill of Complaint, for the rea-

son that the subject matter thereof is privileged as between attorney and client and is immaterial and does not touch upon the issues involved in this case.

10½. All of the testimony from Line 18, page 442, to and including the last line of Page 445, for the reason that the same purports to be concerning an alleged dispute between the Wagner Brothers, and for the reason that the same is scandalous, immaterial and impertinent and does not prove or disprove any of the issues of the present case.

11. The statement of Mr. Riskind at Page 457, which is as follows: "I want to show your Honor that this Union Organization has been carried on under the supervision and recommendations of certain officials", for the reason that said statement is scandalous and impertinent and is not supported by any competent evidence and does not prove or disprove any issue of the case.

12. The statement of Mr. Riskind at Page 463, is as follows: "I object to that. I do not think she was present at our settlement. All this testimony was given in the Meadowmoor Dairy case", for the reason that said statement is scandalous and impertinent.

13. Commencing with the words of Mr. Riskind, on
93 Line 21, of Page 467 as follows: "If the wages of our men * * *", and ending with the Answer on Line 4, of Page 469, being "no", for the reason that the questions are based upon conjecture and wholly speculative, are immaterial and do not tend to prove or disprove any of the issues in the case.

14. Commencing with the words on Line 7, of Page 492, as follows: "The fact that this cut rate milk * * *" and ending with the words "Yes I certainly would" on Line 20, of said Page, for the reason that said question is based upon conjecture and wholly speculative and improper, is irrelevant and immaterial and does not tend to prove or disprove any of the issues in the case.

15. Commencing with the question on line 16, of Page 524, as follows: "Were you present when a contract was signed between Local 819 and the Wagner Dairy Company?" and ending with the words "I doubt it" on the last line of Page 532, for the reason that the Master erred in permitting the witness to be called as the Court's witnesses, as no sufficient basis therefor existed, and that the entire line of questions was irrelevant and immaterial and does not tend to prove or disprove any of the issues of the case.

16. That the entire testimony of the defense witness Robert A. Lamson, appearing at Pages 564 to 586 both

inclusive, for the reason that the same is immaterial and irrelevant and does not tend to disprove or prove any of the issues of the case.

17. The statement of Mr. Riskind appearing at the bottom of Page 568 and the top of 569 as follows: "That has been followed in all the cases and in our Answer, I state that the Meadowmoor Dairy * * *", for the reason that the said statement is scandalous, impertinent and improper.

18. The statement of Mr. Riskind commencing on
94 the 4th line from the bottom of Page 569 as follows: "That after it is pasteurized and put through its processes, then the pasteurized cream and pasteurized milk is an entirely new manufactured article and thereafter with the sale of the manufactured article is confined solely to the State of Illinois, and the City of Chicago, it is intrastate; it then becomes intrastate and loses its interstate individuality". That said statement of counsel is irrelevant, incompetent and improper; that no evidence to that effect was introduced by the defendants.

19. The Statement of Mr. Riskind appearing on Page 574, Line 10, and ending on Line 18 thereof commencing with the words: "Yes, we intend to show it, * * *" for the reason that said statement is irrelevant, incompetent and not supported by any testimony.

20. All the testimony appearing on Pages 576 and 577, concerning "bacteria count" for the reason that the same is irrelevant and immaterial and does not tend to prove or disprove any of the issues of the case.

21. Commencing with Line 9, page 581, with the words: "Assuming milk is brought in from * * *" to and including the word "yes" on Line 13, of Page 582, for the reason that the bacterial content of milk is not any issue in this case, and that the same is irrelevant and immaterial.

22. From Line 14, Page 582, to and including Line 9, Page 586, concerning the "sterilization" of containers, for the reason that the same is not in issue, and is immaterial and irrelevant.

23. Lines 10 to 15, of Page 586, concerning the bacteria requirements of cream for the reason that the same is not in issue and that the same is irrelevant and immaterial.

24. The entire additional cross-examination of
95 Frank Wagner, appearing on Pages 592 and 593, for the reason that the same purports to concern the title to the Richmond, Illinois, milk plant, which is not in issue in the case and which is irrelevant and immaterial.

25. The entire testimony of defense witness Gust Palmer, appearing at Pages 595 to 604 inclusive, for the reason that

the entire testimony of such witnesses concern dairies other than the Plaintiff Dairies and did not involve any of the parties to the present proceeding, did not tend to prove or disprove any of the issues of the present case and was irrelevant and immaterial.

26. Commencing at Line 8, Page 600 and ending with the termination of direct testimony on Page 604, for the reason that all of such evidence involved a dairy other than the Plaintiff Dairies and that the wages and terms and conditions of employment referred to were not of the plaintiff dairies and do not tend to prove or disprove any of the issues of the present case and are irrelevant and immaterial.

27. The entire testimony of the witness George Beilfuss, commencing at Page 608 and ending at Page 623, for the reason that the testimony is not in reference to any of the parties to the present case, but involve dairies, not parties to this proceeding, does not tend to prove or disprove any of the issues of the present case and is irrelevant and immaterial.

28. The entire Pages 610, 612, 613, 614, for the reason that the same purports to concern wages and terms and conditions of employment involving a dairy which is not a party to this suit and that the same is irrelevant and immaterial.

28. The statement of Mr. Riskind appearing on Page 618 as follows: "My theory of this case is that there is a conspiracy in this case between employer and employee to com-
bat No. 753. This man will bring it out, and how he
96 happened to be there", for the reason that such statement is scandalous and improper.

30. The entire testimony of the defense witness Morton Gerstein appearing at Pages 631 to 634 inclusive, for the reason that the wage scale of the defendant union is not in issue and that the testimony of the witness does not tend to prove or disprove any of the issues in the case, but is wholly irrelevant and immaterial.

31. The testimony of the witness Gerstein, as to wages appearing on Pages 631 and 632, for the reason that the same is immaterial and irrelevant.

32. The entire testimony of the defense witness Albert Harris appearing at Pages 638 to 643 both inclusive, for the reason that the same does not involve the Plaintiff Dairies, is wholly irrelevant and immaterial and does not tend to prove or disprove any of the issues of the case.

33. The testimony of the defense witness Harris appearing on Pages 638 and 639 concerning wages and conditions

of employment, for the reason that the same are not in issue, and are wholly irrelevant and immaterial.

34. The testimony of the witness Harris, commencing with Line 5, Page 642, and ending with Line 19, Page 642, for the reason that the same applied to a dairy not involved in the present suit and is immaterial, irrelevant and not binding upon the plaintiffs.

33. The testimony of the witness Harris, commencing with Line 20, Page 645, to the end of direct examination of the witness on Page 647, for the reason that the same refers to Union dues of a dairy not involved in the present proceeding and is irrelevant and immaterial.

36. The entire testimony of the witness Joseph Schlee, from Pages 648 to 653, both inclusive, for the reason that the same does not refer to any of the parties to the
97 present proceedings and is immaterial and irrelevant.

37. The entire testimony of the witness Steve Schostok, Pages 664 to 667 both inclusive, for the reason that the testimony does not apply to the Plaintiff dairies and that wages earned by another dairy is immaterial and irrelevant to the isues in the present case.

38. The testimony of the witness Steve Schostok, appearing at Page 665 concerning his present wages, for the reason that the same is immaterial and not in question in the present case.

39. The entire re-direct examination of the witness Steve Schostok, at Pages 674 and 675 for the reason that the same applies to a dairy other than the Plaintiffs and is not in issue in the present case.

40. The entire testimony of the witness James Cavico, Pages 677 to 680, both inclusive, for the reason that the same applies to earnings with a dairy other than the Plaintiff dairies concerned several years ago and is immaterial and irrelevant to the issues in the present case.

41. The entire testimony of the witness Walter Job, Pages 686 to 689, both inclusive, for the reason that the same refer to wages earned with dairies, other than the Plaintiff dairies and are immaterial and irrelevant to the issues in the present case.

42. The entire testimony of the witness Al Zeller, Pages 694 to 696, for the reason that the same refer to wages earned with dairies other than the Plaintiff dairies and are immaterial and irrelevant to the issues in the present case.

43. The entire testimony of the witness Harry Wald, appearing on Page 707, and including the first six lines of Page 708, for the reason that the salary, conditions of, or

instructions to pickets are immaterial and not an issue in the present case.

44. The testimony of the witness Wald, commencing
98 with the fourth line from the bottom of Page 715, and including the entire page of 716, and ending with the 11th line of Page 717, for the reason that such testimony refers generally to the manner of picketing and does not fix any date or place, is not binding upon the Plaintiffs and is irrelevant, incompetent and immaterial.

45. The testimony of the witness Wald commencing on Line 10, Page 718 and ending with the end of direct examination on Page 719 as to the reason for picketing, because the same is improper and immaterial as the witness's reason for picketing is in no way an issue in the present case.

46. The entire re-direct examination of the witness Wald pages 738 and 739 concerning the hours of labor, for the reason that the same are not in issue is irrelevant, incompetent and immaterial.

47. The entire Pages 744 and 745 of the testimony of the witness Bernard F. Richards, for the reason that the same purports to state the causes why employment was lost seven years ago with a dairy other than the Plaintiff dairy; that the same is irrelevant, immaterial and incompetent and not an issue in the present case.

48. The entire Pages 746 and 747 of the witness Richards, for the reason that the same refer to wages and conditions of employment of, and instructions to pickets, which are not in issue in the present case and are wholly irrelevant and immaterial.

49. The testimony of the witness Richards, commencing with the fifth line from the bottom of Page 751 to and including the end of direct examination on Page 755; that such testimony concerns the witnesses reason for picketing, etc., which is immaterial and not in issue of the present case.

50. The entire testimony of the witness Columbus Stelle, at Pages 744 to 779 inclusive, for the reason that the same applies to the salary, conditions of and instruction to pickets, etc., is not in issue and is immaterial, irrelevant and incompetent.

99 51. The entire testimony of the witness Charles Segale, Pages 788 to 799 inclusive, for the reason that the same applies to the wages, conditions of and instructions to pickets which are not in issue in the present case and is immaterial, irrelevant and incompetent.

52. The entire Pages 823 to 826 of the witness Ray Bryant concerning vendor distributors and helpers, etc.,

for the reason that the testimony did not fix any date, did not refer to the Plaintiff Dairies and that the matters contained in such evidence are not an issue of the present case, but are wholly irrelevant, immaterial and incompetent.

53. The testimony of Ray Bryant, commencing with the Last 8 lines of Page 826, to and including the 4th line from the bottom of Page 828, for the reason that the same refers to the wage scale and conditions of employment of members of the defendant union; that such evidence does not pertain to the plaintiff dairies who do not employ members of the Defendant Union; that the same is not an issue of the present case and is irrelevant, immaterial and incompetent.

54. The testimony of the witness Bryant, commencing with the last three lines of Page 829, and ending with the last line of Page 833, concerning income and conditions effecting vendors for the reason that the same do not apply to the Plaintiff Dairies, are not an issue of the present case, and are irrelevant and immaterial and not binding upon the Plaintiffs.

55. The entire page 834, of the testimony of the witness Bryant for the reason that the reference therein to wages paid by the Wagner Dairy is not in issue in the present case and the reference to the effect to the vendor system is incompetent and improper, based upon conjecture, and not material to the issues of the case.

56. The last eight lines of Page 835, to and including the entire Page 836, of the witness Bryant, concerning conversations at union meeting, for the reason that the same
100 were not in the presence of the Plaintiffs and are hence inadmissable; that the same are self-serving and are immaterial and irrelevant and incompetent.

57. The last ten lines, Page 838, as to the reason for commencing picketing, the last seven lines of Page 839, and the first line of Page 840, as to the course of such picketing, for the reason that the same does not refer to the present case and is immaterial and irrelevant.

58. The last ten lines, of Page 840, all of Page 841, and 842, and including the first sixteen lines of Page 843, for the reason that the same refer to the Meadowmoor Dairy which is not a party to this proceeding and which is immaterial and irrelevant.

59. Commencing with the last ten lines of Page 843, all of Pages 844, 845 and 846, and ending with the third line on Page 847, for the reason that the same refer to the conditions of vendors in a Department of Agriculture hear-

ing held in 1933 and do not touch upon the issues of the present case, but are irrelevant and immaterial.

60. The testimony of the witness Bryant commencing with the fourth line of Page 847, to and including the fourth line of Page 848 concerning helpers on milk trucks, for the reason that the same is immaterial and irrelevant.

61. The testimony of the witness Bryant commencing with the fifth line, Page 848, and ending with the fifth line page 850, concerning relief by the defendant union, for the reason that the same is not an issue of the present case, but is irrelevant and immaterial.

62. The testimony of the witness Bryant, commencing with the 12th line on Page 851, and ending with the fifth line from the bottom of Page 853, concerning the relationship of defendant Union wage scale to retail prices, for the reason that the same is immaterial and irrelevant.

63. The testimony of the witness Bryant appearing
101 on Pages 857 to and including the sixth line from the bottom of Page 861, for the reason that the same refers to a conference purportedly had concerning the Meadowmoor Dairy Company, which dairy is not a party to the present case; that such evidence is immaterial and irrelevant.

64. The entire testimony of the witness Bryant appearing on Pages 863, 864 and ending with Line 14 of Page 865, concerning instructions to pickets, etc., for the reason that the same were not binding upon the Plaintiffs and are incompetent and immaterial.

65. The testimony of the witness Bryant commencing with the last line Page 925, and ending with the sixth line of Page 929 concerning the form of union contract, for the reason that the same is immaterial and improper and the experience of the defendant is in no way binding upon the Plaintiffs.

66. That the entire offer of proof of defendant counsel commencing with the last two lines of Page 932, and ending on the fourth line from the bottom of Page 933, except in so far as it was stipulated by plaintiffs' counsel that Mr. O'Connor would testify that he did not make the threats referred to, for the reason that none of the other facts were stipulated to in the record.

67. All of Pages 936 to 942 inclusive of the witness Steve Sumner concerning the history of the Defendant Union, for the reason that the same is immaterial and irrelevant.

68. All of the testimony of the witness Steve Sumner, commencing with the fourth line from the bottom of Page 944, and ending with the fifth line from the Bottom of Page

951, concerning the history of the Meadowmoor Dairy, for the reason that such Dairy is not a party to the present case and that the same is irrelevant and immaterial.

68½. The testimony of the witness Sumner commencing with the thirteenth line of Page 952, and ending with the thirteenth line of Page 954, concerning the vendor system, for the reason that the same is immaterial and irrelevant.

102 69. The testimony of the witness Sumner from Line 8, of Page 967, to the bottom of said Page, as to opposition to the system of distribution for the reason that the same is immaterial and irrelevant.

70. The testimony of the witness Sumner, commencing on the 17th line of Page 968, and ending with the fifth line of Page 969, concerning relief payments, for the reason that the same is immaterial and irrelevant and not an issue in the present case.

71. The testimony of the witness Sumner, commencing with Line 6, and ending with Line 14, of Page 970, concerning the relationship of the price of milk and wage scale for the reason that the same is immaterial and irrelevant and not an issue of the present case.

72. The testimony of the witness Bryant, commencing with the 3rd line of Page 984, and ending with the termination of re-direct examination on Page 985 concerning the printed circular, for the reason that the circumstances and the purpose of the circular are immaterial, inasmuch as the circular speaks for itself and such evidence is immaterial and irrelevant.

73. The testimony of the witness Sumner, on Page 996, concerning benefits to members, for the reason that the same is not an issue and is immaterial and irrelevant.

74. The volunteered statement of the witness Sumner on Lines 8 to 12, Page 997, for the reason that the witness was asked no question.

75. The testimony of the witness Korda, commencing with the 12th line of Page 1021 and ending with the 9th line of Page 1026, concerning wages, etc., for the reason that the same are not an issue and are immaterial and irrelevant.

76. The testimony of the witness Korda, on Lines 18 to 23, Page 1034 concerning Income for the same reason as the foregoing.

76½. The questions of defense counsel and answers 103 of witness Wagner commencing with Line 16, Page 1059, and ending with Line 14, Page 1060, for the reason that the same are irrelevant and immaterial and not

involved in the issues of the case and were asked for scandalous and prejudicial purposes.

77. The testimony of the witness Wagner on cross-examination commencing with Line 3, Page 1101 and ending with the fourth line from the bottom of Page 1103, concerning certain store owners purchasing milk from the Wagner Dairy, for the reason that the same is not involved in the present suit and is immaterial and irrelevant.

78. The cross-examination of the witness Weiss, on Lines 9 to 15, Page 1171, as to employees of the Lake View Dairy, for the reason that the said Dairy is not a party to the present suit, and that the same is irrelevant and immaterial.

79. The volunteered statement of the witness Sumner, commencing with the seventh line from the bottom of Page 1220, and ending on the 1st line of Page 1221, for the reason that no question was asked of the witness.

80. The volunteered statement of the witness Sumner commencing with Line 3, and ending with Line 10, of Page 1222, for the reason that no question was asked the witness.

81. The statement of defense counsel on lines 10 to 12, of Page 1227 concerning the organization of the Plaintiff Union as being improper and prejudicial.

82. That defendants' Exhibit 8, admitted in the record at Page 1239, be stricken from the record as not referring to the present case and as irrelevant, immaterial and incompetent.

83. That defendants' Exhibit 9, admitted in evidence at Page 1240, be stricken from the record for the same reason.

84. Defendants' Exhibit 10, admitted in evidence at Page 1242, be stricken from the record, for the same reason.

85. Commencing with the sixth line from the bottom of Page 201, to and including the bottom of Page 217, for
104 the reason that the said Pages contain no questions or answers of witnesses, but contain only the prejudicial and improper statements, of counsel, which cannot properly be part of the record.

Arthur R. Seelig,
Attorney for Plaintiffs.

105 And on, to wit, the 6th day of August, 1938, came the Defendants by their attorneys and filed in the Clerk's office of said Court their certain Motion to Strike, in words and figures following, to wit:

106 DISTRICT COURT OF THE UNITED STATES OF AMERICA. Filed Aug. 6, 1938.

* * (Caption—16073) * *

MOTION TO STRIKE.

Now come the defendants, Milk Wagon Drivers' Union, Local 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, a voluntary association; Robert G. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, Alvin F. Richards and Joseph L. Patterson, by David A. Riskind their duly authorized attorney, and move the court to strike from the record herein the tetstimony of the following witnesses, as set out in this motion, for the reasons that said testimony is incompetent, irrelevant and immaterial and is hearsay and is not based upon the action of any person who could bind the defendants herein:

The testimony of Harry Entin appearing on pages 9 and 10 of the transcript which is as follows:

A: The violence? My windows were broken three times on different occasions. It happened four years ago—then about four months later and then two years ago last July."

The statement that these windows were broken without any definite statement as to who did it is something that encumbers the record and prejudices anybody that would read it.

The testimony of Joseph Bazik appearing at pages 39 and 40 of the transcript which is as follows:

107 "Sunday night my windows were smashed.

Mr. Seelig: Of this year?

A: Of this year, yes.

Q: What occurred at that time?

A: Well—my windows were broken again."

Again there is no testimony as to who caused this breakage of windows.

The testimony of Carla Fischer appearing at page 43 of the transcript which is as follows:

Mr. Seelig: What, if anything, happened at that time?

A: Well, we had our windows broken in one night."

The statement that these windows were broken without any definite kowledge as to who did it is something that encumbers the record and prejudices anybody that would read it.

The testimony of Joseph Spry appearing on page 49 which is as follows:

"Two men came in and said, "You wouldn't like to have your windows broken, would you?"

Again there is no testimony as to who these men were that

threatened him and there is no testimony that his windows were broken.

The testimony of Siegfried Weiss appearing on pages 110-111-112-113-114-115-116-118-119-120-121-122 and page 130 of the transcript which is as follows:

"Q: State what you observed?

A: They had their windows broken.

Mr. Riskind: Objection.

The Witness: There were stores burned up. It was bombed. There were stink bombs thrown in them. They were forced out of business by having the stores picketed and picketing not in a lawful manner. They stopped all deliveries. They stopped customers from coming in. It is five years. We observed these things. It is a continuous trouble for all these milk stores and our dairy.

Mr. Seelig: What has been the experience of your dairy within the last five years?

A: We were bombed in June, 1935 and September 1935. The Lake View Dairy, that is part of our dairy, was bombed in 1934. Our trucks were dumped in the river. They were burned in 1934. Our drivers were kidnapped, and taken out to Lincoln Park, trucks taken away from them.
108 I observed the Edgewater Dairy bombed in 1934. For the last five years I have seen dozens of Edgewater Stores with broken windows.

I observed a man with bruises.

The Blue Ribbon stores had broken windows.

The Meadowmoor Dairies' stores had broken windows. I observed the Wagner Dairy stores had broken windows. I saw turned over trucks. I observed the Cloverdale Dairy Stores with broken windows.

I observed broken windows at 3810 Lake Park Avenue. Also 2547 West 51st Street. This happened a few days ago."

Again there is no testimony as to who caused the violence or the breaking of these windows. Such evidence is clearly incompetent and is brought into the record clearly to prejudice this court.

The testimony of Jesse Wilson appearing on page 168 of the transcript which is as follows:

"My windows were all broken out and a stink bomb was thrown into the store."

Again there is no testimony as to who caused the breakage of windows. Such evidence is clearly incompetent and is only brought into the record to prejudice this court.

The testimony of John Igoe appearing on page 272 of the transcript which is as follows:

"I saw broken windows and I saw pickets in front of one of the stores where the windows were broken about eight days ago."

Again there is no testimony as to who caused the breakage of the windows. Such evidence is clearly incompetent and is only brought into the record to prejudice this court.

The testimony of Frank Wagner appearing on pages 331-332-333-334-335-336 of the transcript which is as follows:

"I have observed broken windows, stink bombs thrown into stores ruining all the food in the stores and the storekeepers were unable to sell them.

I have observed that they have had broken windows, where they have had insurance, and where they cancelled out the insurance and the storekeeper was unable to 109 to get plate glass insurance for the windows.

Windows were broken and they threw stink bombs into the place and also go into the place and want to fight with the storekeeper. This has taken place since 1931.

In 1932 I observed that the equipment of the Edgewater Dairy was broken up with a sledge hammer, punctured pasteurizers. I have also observed that the Belmont Dairy machinery was broken, pasteurizers punctured, all the machinery wrecked. I have observed it at the Uptown or Blue Ribbon Dairy.

I observed machinery broken, pasteurizers hammered up with a hammer, coolers broken.

The Wagner Dairy had their place bombed in 1931. In 1932 they threw another bomb in and wrecked the building. In 1933 they threw a great big bomb in and there was a lady injured that was working in the garden."

That these statements made by this witness as to terrorism, bombing and broken windows are admitted by him to have been done so by people unknown to him. When asked directly if he had ever seen any of these acts committed he said that he had not. In fact, the former owner of the Lake View Dairy, Gust Palmer, testified that he was threatened by another non-union dairy, the Blue Ribbon Dairy, and that he had the owners of this dairy arrested and charged with the bombing. This evidence is strictly hearsay and we most respectfully contend that even though conspiracy laws allow a great deal of circumstantial evidence to come in, there must be some limits and where the evidence is in no way connected with Local 753, such evidence should be stricken.

The testimony of Mimi Kuelmar appearing on pages 460 and 464 of the transcript which is as follows:

"My store—the windows got broke.

A fellow smashed the windows at 4640 Broadway."
The statement that these windows were broken without any definite statement as to who did it is something that encumbers the record and therefore should be stricken.

The testimony of Josephine Hall appearing on page
110 474 of the transcript which is as follows:

"The window had been broke for a long time and I had a piece of tin which I put in there and they broke it the second time and I had one broke the other day, but I don't know just how it was done."
We respectfully urge that this evidence be stricken from the record. This witness said that her windows were broken and that she did not know who did it. She did say that when the windows were broken the last time a man employed by the United States Government was arrested for breaking the windows. Certainly this is evidence that in no way is connected with the union. No identification is made. It is strictly hearsay and should be stricken.

The testimony of Mrs. Mable Bruce which appears on page 1001 of the transcript which is as follows:

"Two o'clock in the morning the windows were broken."
Again there is no identification or connection with the union. Such evidence is strictly hearsay and should be stricken.

The testimony of Chester Hall which appears on page 1061 of the transcript which is as follows:

"The windows were broken about a week after Mr. O'Connor paid us a visit in the middle of the night. Two bricks were thrown through the plate-glass window at night. I know that our windows were put in and they were broken again."
Again there is no identification or connection with the union. Such evidence is strictly hearsay and should be stricken. In fact, when Mr. Hall was asked the question as to whether or not he knew who broke the windows he stated that he did not know.

The testimony as to Frank Wagner on page 1095 of the transcript which is as follows:

"The stores have had windows broken, stink bombs were thrown into their places."
No identification as to who did this. Therefore this matter is strictly hearsay and should be stricken.

111 Defendants move to strike all of the cross-examination of Steve C. Sumner contained on pages 1192 to

1222, inclusive, on the ground that it is incompetent, irrelevant and because counsel for the plaintiffs has not produced any competent evidence in any manner to corroborate any of the insinuations that he has put in the record against Mr. Sumner.

David A. Riskind,
Attorney for Defendants.

142 And on, to wit, the 8th day of August, 1938, there was filed in the Clerk's office of said Court a certain Master's Report on Application for Injunction, in words and figures following, to wit: Filed Aug. 8, 1938.

143 In the District Court of the United States

For the Northern District of Illinois,

Eastern Division.

Lake Valley Farm Products, Inc., a Corporation, *et al.* *vs.* Milk Wagon Drivers' Union, Local 753, *et al.* } In Equity No. 16073.

MASTER'S REPORT ON APPLICATION FOR INJUNCTION.

To the Honorable Judges of the District Court of the United States, for the Northern District of Illinois, Eastern Division:

The undersigned, Charles A. McDonald, a Master in Chancery of the United States District Court, for the Northern District of Illinois, Eastern Division, to whom as such Master the application for a preliminary injunction was referred by Order of Court entered herein on May 23, 1938, respectfully reports as follows:

1. That on May 21, 1938, Lake Valley Farm Products, Inc., a Corporation, Amalgamated Dairy Workers' Local Industrial Union #819, a voluntary unincorporated association, Josef Wagner, doing business as Wagner Dairy Products, Lakeview Co-Operative of Watertown, Wisconsin, an Agriculture Co-Operative Corporation of the State of Wisconsin, as Plaintiffs, filed their Bill of Complaint herein against Milk Wagon Drivers Union
144 Local #753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, a Voluntary Association, Robert G. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, Alvin F. Richards and Joseph L. Patterson, Defendants, in which it alleged:

That Plaintiff, Lake Valley Farm Products, Inc., is an Illinois Corporation, having its principal place of business in Chicago, Illinois; that Amalgamated Dairy Workers Local Industrial Union #819 maintains its executive offices in the City of Chicago, County of Cook and State of Illinois; that Josef Wagner is a resident of the State of Illinois; that Lakeview Co-Operative is a Wisconsin Corporation, having its principal place of business in the town of Watertown, in the State of Wisconsin, and that all of said defendants are residents of the State of Illinois.

The Complaint further alleges that this is a suit of a civil nature in equity arising under the laws of the United States enacted to give protection to trade and commerce and against unlawful restraints and monopolies, commonly known as the "Sherman Anti-Trust Act", coupled with "An Act to Supplement Existing Laws Against Unlawful Restraints and Monopolies and for Other Purposes" commonly known as the "Clayton Act". The complaint prays that the Court in granting complete
145 relief to the Plaintiffs adjudicate and determine the rights of the Plaintiffs under the Statutes of the State of Illinois entitled "An Act Approved June 28, 1919, Amending the Conspiracy Act of March 27, 1874" and to adjudicate and determine the rights of the Plaintiffs under Section 19 of the United States Criminal Code. The Complaint further states in Paragraph #14 thereof that the jurisdiction of the Court is invoked by virtue of the diverse citizenship of the parties Plaintiff and Defendant.

2. The facts as set forth in the Bill of Complaint, briefly stated, are as follows:

That the Plaintiff, Lake Valley Farm Products, Inc., is engaged in the business of processing and distributing milk and dairy products in the City of Chicago; that its pasteurizing plant is located at 5330 South Western Avenue, in said City; that said Corporation has a large investment in its dairy and its delivery equipment; that approximately ninety persons are employed in its Plant in connection with the processing of its milk and dairy products and in the distribution of said products; that said Plaintiff has at all times enjoyed a satisfactory relationship with the purchasing public and has also established a reputation for the satisfactory quality of its products; that it has created and built up a good-will; that the ability to continue to serve said public is of great value and worth to said Plaintiff; that said property
146 and established business is of the value of approximately Two Hundred Thousand Dollars ($200,000.00).

3. That the Plaintiff, Josef Wagner, doing business as Wagner Dairy Products, is now and for more than twenty years prior to the filing of the aforementioned Bill of Complaint has been engaged in the business of processing and distributing milk and dairy products in the City of Chicago and its environs; that said Josef Wagner has a large investment in dairy and delivery equipment; that there are approximately twenty-four persons employed in his Plant in connection with the processing and handling of milk and dairy products and in the distribution of said products; that the property and the good-will of the established business of said Plaintiff is of the value of approximately Fifty Thousand Dollars ($50,000.00).

4. That the Plaintiff, Amalgamated Dairy Workers Local Industrial Union #819, is an unincorporated association, at common law, of natural persons chartered by its parent union the Committee for Industrial Organization, for the purpose of organization and collective representation of workers engaged in the dairy industry; that in the furtherance of its aforesaid purposes said Plaintiff Union organized divers dairy workers in the
147 City of Chicago, among whom are the workers employed by and in the processing, handling and distributing the products of said Plaintiffs, Lake Valley Farm Products, Inc., and Wagner Dairy Products.

5. The Complaint further alleges that said Plaintiff, Lake Valley Products, Inc., receives its daily requirements of fluid milk of and from said Plaintiff, Lakeview Co-

Operative of Watertown, Wisconsin, which corporation maintains a country receiving Plant or Station at the town of Watertown in the State of Wisconsin; that the said Plant receives said fluid milk from farmer producers whose farms are located adjacent to said country plant, all of which farms are situated in and said farmer producers are residents and citizens of the State of Wisconsin; that said farmer producers deliver milk to the country plant where said milk is collected and thereafter, on the same day, is placed in and transported by motor trucks over the public highways from the State of Wisconsin into the State of Illinois and to the dairy plant of the Plaintiff, Lake Valley Farm Products, Inc., in the City of Chicago.

6. That the Plaintiff, Josef Wagner, doing business as aforesaid as the Wagner Products, receives his fluid milk supply from the Richmond Milk Plant maintained and operated in the town of Richmond, County
148 of Cook and State of Illinois; (This, no doubt, is an error as this town of Richmond is located in Lake County) that said Dairy Plant is situated a few miles from the boundary line of the State of Wisconsin; that said Richmond Milk Plant receives fluid milk from farmer producers, many of whom are situated in the State of Wisconsin and who bring said milk from the State of Wisconsin, the point of production, to said Richmond Milk Plant; that said milk so received is collected and thereafter on the same day is transported by motor truck upon the public highways in the stream of interstate commerce to the dairy plant of said Plaintiff, Josef Wagner, in the town of Cicero and State of Illinois.

7. The Bill further alleges that milk and cream produced outside of the State of Illinois and sold in the City of Chicago in the course of the conduct of the business of the Plaintiff Dairies, and the transportation of said fluid milk to said Dairies, constitutes a large and important continuous course of business conducted in the stream of interstate commerce among the several states of the United States of America, as the term is defined and employed by the laws of the United States, which laws are referred to in said Bill of Complaint; that the fluid milk received daily by the Plaintiff Dairies as described in said Bill of Complaint is immediately thereafter pasteurized and bottled; that the pasteurizing
149 and bottling requires a very short period of time; that the milk so received and pasteurized is distributed on the same day it is received and within a few hours

thereof; that the Plaintiff Dairies distribute a portion of said bottled milk and cream to numerous business establishments situated in the City of Chicago, such as milk stores, grocery stores, delicatessens, food stores and other retail establishments where said milk and cream is sold at retail to the ultimate consumer thereof; that said bottled milk is distributed to said stores by motor trucks, which are the property of the Plaintiff Dairies and are operated by drivers employed by said Plaintiff Dairies who are members of the Plaintiff Union; that a portion of said bottled milk and cream is sold to various persons who own and operate automobile truck equipment, who pick up said bottled milk and cream at the pasteurizing Plant of said Dairies and thereafter distribute it to various milk and food stores, and that said persons so operating said delivery truck equipment are of a class commonly known and referred to as "Vendors."

8. That in the distribution of milk in the City of Chicago, two methods are employed, one by delivery direct to the home of the ultimate consnmer and the other by the so called cash and carry method. That because of the high cost of delivering said milk and cream direct to the home the practice has grown and is now prevalent in the City of Chicago of selling bottled milk and cream in the alleged cut-rate stores at prices lower than the prices charged for the milk and cream delivered direct to the home as aforesaid.

9. The complaint further alleges that the Dairies located in the City of Chicago which employ members of the defendant union, distribute the greater part of all milk that is distributed in the City of Chicago and monopolize such distribution in Chicago, thereby directly affecting interstate commerce; that the defendant union by virtue of an unlawful conspiracy, confederacy, combination and agreement with said Dairies has sought to maintain an artificial price of milk in the City of Chicago and has sought to prevent the Plaintiff Dairies and other independent cut-rate dairies from distributing milk at reasonable prices.

10. That said defendants, conspired among themselves and with divers other persons, in an attempt to regulate and control the retail price of milk in the City of Chicago; that the independent stores selling cut-rate milk, for the several years last past, have been bombed, destroyed by fire, their plate glass windows have been smashed, stench bombs have been thrown, their customers intimidated and threatened, owners and clerk employed therein

were threatened and assaulted, ingress by customers
151 prevented, delivery therein of food stuffs and other necessary commodities were prevented, patrons of said stores were insulted, threatened and otherwise abused, and other unlawful and criminal acts have been committed, all of which acts, as alleged in the Bill of Complaint, were caused by or charged to the defendants.

11. That in addition to said alleged criminal acts the defendant union in order to carry out and give effect to said alleged unlawful conspiracy, confederacy, combination and agreement, has caused its members to patrol back and forth in front of said independent milk stores, carrying banners having the following legion inscribed thereon: "This Store Is Unfair to Milk Wagon Drivers Union Local #753 I. B. T. Affiliated with the A. F. of L." That said picketing of said stores by the defendant union is not peaceful picketing pursuant to a legitimate labor dispute; that said stores are not involved in any labor dispute; that said picketing is and constitutes a secondary boycott in unlawful restraint of trade as defined by the laws of the United States; that said picketing has been accompanied by threats of force, intimidation and violence; that the end sought to be achieved thereby is to create a monopoly in restraint of interstate trade and commerce, and is illegal.

12. Said Bill of Complaint describes in detail various acts of violence alleged to have been committed by the
152 defendants in pursuance of said alleged conspiracy.

13. The Complaint further alleges that by reason of said unlawful acts the Plaintiff Dairies have lost the patronage of a large number of stores that as a result of said unlawful conspiracy and conduct of said defendant the interstate trade and commerce of the Plaintiffs and of trade and commerce generally in milk and cream coming into the State of Illinois has been greatly demolished, decreased and restrained; that if said conspiracy, combination and confederacy is permitted to continue without the intervention of the Court it will be impossible for the Plaintiff Dairies and the Plaintiff Co-operative to continue in the exercise of their respective business in the flow and stream of interstate commerce, as in said Bill of Complaint described, and that said business will be ruined and destroyed.

4. The Complaint seeks the issuance of a temporary injunction restraining and enjoining the defendants from in any manner whatsoever unlawfully interfering with, hindering or obstructing said Plaintiffs in the free, uninter-

rupted control and direction of their respective affairs, from picketing said stores described in said Bill of Complaint and from unlawfully interfering with hindering or obstructing the Plaintiff Dairies from the distribution of their respective products; that said temporary injunc-
153 tion may after a hearing be made permanent and that said injunction be issued without bond.

15. The defendants herein filed a joint answer to said Bill of Complaint, which answer admits certain of the allegations of said Bill, but denies that the suit is of a civil nature in equity, which arises under the laws of the United States as set forth in said Bill of Complaint; denies such a diversity of citizenship as is required to give the Court jurisdiction; denies that the vendors described in Paragraph 29 of the Complaint are not eligible for membership in the defendant union, but states as a fact that any vendor of milk is eligible to membership provided he agrees to comply with the constitution and by-laws of said union.

16. Said answer further denies that there is an uninterrupted stream and flow of milk in interstate commerce by reason of the fact that raw milk is transported from other states into the State of Illinois, but alleges as a fact that when the raw milk transported from an other State is delivered to its destination at the various dairy plants located in the City of Chicago, the said raw milk is taken from its original containers and put into tanks which are located within said dairy plants and that it is thereafter processed and manufactured into salable articles such as milk, cream, butter, cheese and other dairy products;
154 that by so doing the newly manufactured articles become purely intrastate articles in character.

17. Said answer further denies that the picketing of the stores by the defendant union is not peaceful picketing and states as a fact that said picketing is at all times peaceful and is restored to for the purpose of advertising a legitimate labor dispute.

18. Said answer further denies any unlawful conspiracy, confederacy, combination or agreement to commit the alleged acts of violence charged in the Bill of Complaint. As to certain other allegations contained in the Bill of Complaint the answer neither admits nor denies them, but calls for strict proof thereof.

19. As a further defense to said Bill of Complaint said answer contains numerous allegations explaining the purpose of the defendant union, the working conditions of the employees, prior to the organization thereof, and the bene-

fits derived therefrom for its members since its organization in the year 1902.

20. Said answer further sets forth the scale of wages paid to truck drivers and helpers engaged in the delivery of so-called cut-rate milk.

21. Said answer further states that said defendant union, in an effort to unionize the entire milk industry
155 in the City of Chicago, including said Plaintiff Dairies, did cause the picketing of various cut-rate milk stores; that the unfairness of said respective stores consisted in the acceptance, delivery and purchase of milk from members of the craft who were not unionized.

22. The answer further alleges that a labor dispute existed and still exists between the Plaintiff Dairies, the Plaintiff Union and the Defendant Union and its members with respect to wages, terms and conditions of employment; that this cause involves a dispute between persons engaged in the same craft or industry, namely—the milk industry; that it also involves a dispute between persons having a direct or indirect interest in the same industry, namely,—the milk industry, that it involves conflicting interests in a labor dispute among persons participating therein and that the dispute involved in this cause is a controversy concerning terms and conditions of employment.

23. Said answer prays that this cause be dismissed for want of jurisdiction or in the alternative that said Bill of Complaint be dismissed for want of equity.

24. Hearings on the matters involved in these proceedings were had before the undersigned Master on sev-
156 eral dates beginning with May 25th and ending July 7th, 1938. A transcript offered and received at such hearings is contained in two volumes. Volume 1 consists of Pages 1 to 493 both inclusive, and Volume 2 consists of Pages 494 and 1239, both inclusive, both of which are filed herewith, made a part hereof and marked Exhibits "A" and "A-1" respectively. At the close of the evidence respective counsel spent several days in argument and thereafter filed exhaustive briefs herein, all of which have been given careful consideration by the Master.

25. During the course of the aforesaid hearings the Master prepared a statement of the pertinent issues involved herein and suggested that counsel confine the evidence and their argument to said issues. The statement of issues referred to is as follows:

Milk Purchased in the State of Wisconsin and Shipped Into the State of Illinois Flows in Interstate Commerce.

1—Does such milk continue to flow in interstate commerce

(a) after it is delivered to the purchasing Dairy in the State of Illinois?

(b) After such milk is mixed with domestic milk by such purchasing Dairy?

(c) After it is processed by such purchasing Dairy?

(d) After it is delivered to the purchasing cut-rate stores?

If not, at what point does such milk cease to flow interstate commerce?

2—Have the defendants entered into a conspiracy to injure the Plaintiff's business?

157 3—Have the defendants entered into an unlawful combination in restraint of trade in violation of the Sherman Anti-Trust Law?

4—Is there a labor dispute pending between the defendant union and either of the Plaintiffs, as contemplated by the Norris-LaGuardia Act?

5—Does the Bill allege facts showing diversity of citizenship?

26. In order to get as complete record as possible before the Court, the Master allowed the respective parties a wide latitude in the introduction of testimony. At the conclusion of the Master's hearings counsel for the respective parties presented a written motion to strike certain parts of the testimony. Under the strict rules of evidence some of the testimony received is no doubt inadmissible. In reaching his conclusions the Master has, however, given consideration only to the competent testimony and therefore the motions to strike testimony will be denied.

27. As above stated, one of the allegations of the Bill of Complaint seeks to show jurisdiction of this Court by reason of diversity of citizenship of the parties. A federal Court acquires jurisdiction in certain cases where the amount involved exceeds $3,000.00 and where the parties are residents of different states. There is no denial of the fact that the amount involved in this controversy exceeds the sum of $3,000.00. However, in determining the question of diversity of citizenship it is necessary that all of the

Plaintiffs reside in States different from the States in 158 which the defendants reside. The rule as stated in

Volume 25, Corpus Juris, Article 62, Page 749, as follows:

"In order that a controversy may be 'between citizens of different states' so as to give a Federal Court jurisdiction, it is necessary that all the parties on one side of the action shall be citizens of different states from all the parties on the other side."

In the case at bar three of the Plaintiffs are residents of the State of Illinois, and one is a resident of the State of Wisconsin. All of the defendants are residents of the State of Illinois. It is apparent, therefore, that the Federal Court does not have jurisdiction of this case by reason of diversity or citizenship, hence it will be necessary to look to other alleged grounds relied upon to establish jurisdiction in the Federal Court.

28. The Plaintiffs contend that the milk in question which is produced in Wisconsin and brought into the State of Illinois in interstate commerce continues to flow in interstate commerce after it is mixed with domestic milk, pasteurized, bottled, delivered to the cut-rate stores, and is in the course of delivery to the consumers. Said Plaintiffs also contend that any interference with the business of the retail dealer who sells said milk direct to the customers is such an interference with interstate commerce as will bring the case within the provisions of the Sherman Anti-Trust Law and the Clayton Act. Numerous authorities on this question have been cited by the respective parties, some of which are not in entire harmony. Certain of the apparent disagreements of said authorities can be accounted for by reason of the difference in facts. Many of the cases involving the question of taxation by different states lay down strict rules as to when interstate commerce ceases and the handling of the product becomes purely intrastate.

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29. There are also numerous cases pertaining to common carriers which follow a rule of law somewhat at variance with the rule contended for in labor cases of this character. One of the more recent decisions of the United States Supreme Court, analagous to the case at bar, is contained in the case of *Schecter Corporation* v. *The United States,* 295 U. S. 495 in which the N. R. A. Act was declared unconstitutional. Mr. Chief Justice Hughes in passing upon the question involved therein used the following language:

"The undisputed facts thus afford no warrant for the argument that the poultry handled by the defendants at

their slaughter house markets was in a 'current' or 'flow' of interstate commerce and was thus subject to congressional regulation. The mere fact that there may be a constant flow of commodities into a state does not mean that the flow continues after the property has arrived and has become co-mingled with the mass of property within the state and is there held solely for local disposition and used. So far as the poulty here in question is concerned, the flow in interstate had ceased. The poultry had come to a permanent rest within the state. It was not held, used or sold by defendants in relation to any further transactions in interstate commerce and was not destined for transportation to other states."

160 It will be noted that the poultry in question had come to a permanent rest within the state in question; that it was not held, used or sold in relation to any further transactions in interstate commerce and was not destined for transportation to other states. In that respect the case is similar to the case at bar and is an authority bearing directly on the question involved herein.

30. The leading case relied upon by Plaintiffs, entitled *"Baldwin* v. *Seelig"*, 294 U. S. 511, is not an authority supporting the proposition that milk distributed or being sold in the state of New York after being pasteurized, processed or bottled, is still flowing in interstate commerce. In that case the Court was passing upon a New York Statute which provided that no dealer within the State of New York might lawfully sell or distribute milk in said State unless the price paid therefor by said dealer or distributor to the producer, i. e., the farmer, was equal to the amount required by statute to be paid to New York producers of milk. In the case of *"Hannoford* v. *Silas Mason Company,"* 300 U. S. 577, the Court, in referring to the decision in *"Baldwin* v. *Seelig"*, said:

"New York was attempting to project its legislation within the borders of another State by regulating the price to be paid in that State for milk acquired there. She said in effect to farmers in Vermont: 'your milk cannot be sold by dealers to whom you ship in New York unless you sold it to them in Vermont, at a price determined here.' "

161 31. Plaintiffs contend that because of the picketing of the retail stores selling the cut-rate milk in question and because of the other alleged acts of violence committed, the Plaintiff Dairies have lost certain of said stores as customers; that such loss of customers has diminished the amount of milk the Plaintiff Dairies purchase from Wis-

consin or other states which constitutes an interference with the flow of milk in interstate commerce. This cause viewed in the light of the Courts reasoning in the above referred to cases, convinces the Master that the milk resting in the store of the cut-rate retailer had ceased to flow in interstate commerce; that, therefore, the acts complained of do not constitute such an interference with interstate commerce as would bring this case within the preview of the Sherman Anti-Trust Law or the Clayton Act.

32. The pertinent provisions of the Norris-LaGuardia Act, which is sometimes called the Anti-Injunction Act, are as follows:

Federal Code Annotated, Title 29:

Section 101: Injunction prohibited except as herein provided. No court of the United States, as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act (chapter); nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this Act (chapter). (Mar. 23, 1932, c. 90, Sec. 1, 47 Stat. 70.)

162 Section 104: Grounds for injunction limited. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts: * * *

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence."

Section 107: Hearing on sworn complaint; testimony; findings; notice; irreparable injury; period of restraint; undertaking.—No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(a) That unlawful acts have been threatened and will

be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, associations, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Section 113:

What constitutes labor dispute; participants; courts included. When used in this Act (chapter), and for the purposes of this Act (Chapter)—

163 (a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated or organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if belief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association com-

posed in whole or in a part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia. (Mar. 23, 1932, c. 90, Sec. 13, 47 Stat. 73.)

33. Whether or not the facts in the case at bar constitute a "labor dispute" as contemplated by the provisions of the above Act is not entirely free from doubt. The Master has given this question careful and painstaking consideration.

The tendency of the courts recently has been to grad-
164 ually broaden the conception of the legitimate purposes of the labor union. In very recent cases the courts have gone to great length to hold that practically any bone fide disagreement involving labor unions and employers constitutes a labor dispute under the terms of the above Act. In the case of *Lauf* v. *Shinner,* 303 U. S. 323, decided in February of this year, the Supreme Court reversed the findings of the District Court and of the Circuit Court of Appeals, both of which had found that no labor dispute was involved therein and held that the facts therein disclosed that a labor dispute was involved. The facts in that case are fully set forth in the opinion hereafter quoted.

The following language of the opinion is pertinent to the question herein under consideration.

"This is a suit to restrain the petitioners from picketing the respondent's place of business; from coercing the respondent to discharge any of its employes who do not belong to the petitioning union, or to compel them to become members of the union and to accept it as their bargaining agent and representative; and from advertising that the respondent is unfair to organized labor or molesting customers or prospective customers or persuading them to cease patronizing it. After a hearing, and upon findings of fact and conclusions of law, the District Court granted a preliminary injunction. The Circuit Court of Appeals affirmed. (*Lauf* v. *Shinner & Co.*, 82 F. (2d) 68.) Upon final hearing the parties relied upon the record as made in the preliminary hearing and some additional testimony.

The District Court found the following facts: The respondent is a Delaware corporation maintaining five meat markets in Milwaukee, Wisconsin. The petitioners are, respectively, an unincorporated labor union and its business manager, citizens and residents of Wisconsin. The respondent's employees number about thirty-five; none of them are members of the petitioning union. The petitioners made demand upon the respondent to require its employes, as a condition of their continued employment, to become members of the union. The respondent notified the employes that they were free to do this and that it was willing to permit them to join but they declined and refused to join. The union had not been chosen by the em-

ployes to represent them in any matter connected with
165 the respondent. For the purpose of coercing the re-

spondent to require its employes to join the union and to accept it as their bargaining agent and representative, as a condition of continued employment, and for the purpose of injuring and destroying the business if the respondent refused to yield to such coercion, the petitioners conspired to do the following things and did them; they caused false misleading signs to be placed before the respondent's markets; caused persons who were not respondent's employes to parade and picket before the markets; falsely accused respondent of being unfair to organized labor in its dealings with employes, and by molestation, annoyance, threats, and intimidation prevented patrons and prospective patrons of respondent from patronizing its markets; respondent suffered and will suffer irreparable injury from the continuance of the practice and customers will be intimidated and restrained from patronizing the stores as a consequence of petitioners' acts. There is more than $3,000 involved in the controversy.

The District Court held that no labor dispute, as defined by federal or state law, exists between the respondent and the petitioners or either of them; that the respondent is bound to permit its employees free agency in the matter of choice of union organization or representation; and that the respondent had no adequate remedy at law. It entered a final decree enjoining the petitioners from seeking to coerce the respondent to discharge any of its employes for refusal to join the union or to coerce the respondent to compel employes to become members of the organization, from advertising that the respondent is unfair to organized labor, and from annoying or molesting patrons or persuading or soliciting customers, present or prospective, not to patronize the respondent's markets. * * *

First. The District Court erred in holding that no labor dispute, as defined by law of Wisconsin, existed between the parties.

Third. The District Court erred in granting an injunction in the absence of findings which the Norris-La Guardia Act makes prerequisites to the exercise of jurisdiction.

Citing Section 13 (c) of the said Act. * * *

Section 7 declares that "no court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined" except after a hearing of a described character, "and except after findings of fact by the Court, to the effect (a) that unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained" and

that no injunction "shall be issued on account of any
166 threat or unlawful act excepting against the person or

persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same. * * *" By subsections (b) to (4) it is provided that relief shall not be granted unless the court finds that substantial and irreparable injury to complainants' property will follow; that as to each item of relief granted greater injury will be inflicted upon the complainant by denying the relief than will be inflicted upon defendants by granting it; that complainant has no adequate remedy at law; and that the public officers charged with the duty to protect complainants' property are unable or unwilling to provide adequate protection. There can be no question of the power of Congress thus to define and limit the jurisdiction of the inferior courts of the United States. The District Court made none of the required findings save as to irreparable injury and lack of remedy at law. It follows that in issuing the injunction it exceeded its jurisdiction.

Fourth. The Court of Appeals erred in holding that the declarations of policy in the Norris-LaGuardia Act and the Wisconsin Labor Code to the effect that employes are to have full freedom of association, self-organization, and designation of representative of their own choosing, free from interference, restraint or coercion of their employers, puts this case outside the scope of both acts since respondent cannot accede to the petitioner's demands upon it without disregarding the policy declared by the statutes. This view was expressed in the court's first opinion on the appeal from the issue of an interlocutory injunction, and the opin-

ion on the appeal from the final order adopts what was said on the earlier appeal as the law of the case. We find nothing in the declarations of policy which narrows the definition of a labor dispute as found in the statutes. The rights of the parties and the jurisdiction of the federal courts are to be determined according to the express provisions applicable to labor disputes as so defined."

34. Counsel for Plaintiffs cites the case of *United Electric Coal Companies* v. *Rice*, 80 Fed. (2d) Page 1 as authority for the contention that no labor dispute exists in the instant case. The said Rice Case was decided by the Circuit Court of Appeals for the 7th Circuit in 1935, prior to the recent decisions of the Supreme Court of the United States on similar questions.

167 That was a case growing out of a dispute between two labor unions in which an employer was in no way involved. Each of the labor unions claimed the right to represent the employees. By reason thereof the employer, who was the Plaintiff in the case, was prevented from operating his business. The Court in that case altho under somewhat different statement of facts than the instant case, held that no labor dispute was involved. The Court, however, in discussing the case made the following statement:

"Of course, there may be a seeming controversy between two unions which is in reality merely a labor dispute between the employer and employees. Such a situation falls within the meaning of the term 'labor dispute'. The employer may not avoid inclusion in a labor dispute if he participates in union activity which directly or indirectly influences or affects employment relations."

35. In the very recent case of *Grace Company* v. *Williams*, 96 Fed. (2d) 478, the Circuit Court of Appeals for the Eighth Circuit held that a labor dispute was involved therein and cited as its authority *Lauf* v. *Shinner, supra,* and *New Negro Alliance* v. *Sanitary Grocery*, 58 Supreme Court Reporter, 703, decided March 28, 1938. The Court further held that the Plaintiff was not entitled to an injunction against the alleged acts of violence charged because the complaint failed to allege facts sufficient to satisfy the requirements of the Norris-LaGuardia Act. Specifically, that the complaint failed to allege that the public officers charged with the duty of protecting the Plain-

168 tiff's property were unable or unwilling to furnish adequate protection.

36. The Master is of the opinion that the dispute involved in the instant case bring it within the provisions

of the Norris-LaGuardia Act in that it involves persons engaged in the same industry, trade, craft or occupation, namely,—the milk industry; that it is a dispute between one or more employers or associations of employers and one or more employees or associations of employees and between one or more employees or associations of employees, and one or more employees or associations of employees. The testimony of defendants' witnesses is to the effect that they have attempted for some time to unionize the employees of the Plaintiff Dairies and other cut-rate Dairies; that the picketing complained of herein is an effort to compel the vendors, and wagon drivers employed by the Plaintiff Dairies to join the defendant union for the purpose of improving working conditions and wages of said vendors and employees of the Plaintiff Dairies, and that the working hours and wage scale of Plaintiff Dairy's employees is lower than the union scale.

37. Said defendants also contend that the alleged Plaintiffs' union is not a completed labor union; that there is no contract existing between said alleged union and
169 said Plaintiff's Dairies which fixes the hours of labor and compensation of its employees.

38. The contracts between the Plaintiff Dairies and the Plaintiff union were introduced in evidence as Plaintiff's "Exhibits #4 and #5." At most they are only temporary agreements providing that within sixty days thereafter the company and the union will negotiate an agreement covering all questions of wages, hours and conditions of employment. "Exhibit #4" is dated April 18, 1938, and "Exhibit #5" is dated May 3, 1938. More than sixty days had elapsed before the conclusion of the hearings herein, but no showing was made that any permanent agreements had been entered into. Whether or not the parties in question will ever enter into such an agreement is entirely problematical. In view of the foregoing the Master finds that the Plaintiff Dairies are not now and have not been operated under a contract with a Labor union fixing the terms and conditions of employment. While the employees of the Plaintiff Dairies have procured a Charter to form a Labor Union and have elected officers thereof, nevertheless so far as the record herein discloses no permanent agreement covering terms and conditions of employment have been discussed or agreed upon.

39. In harmony with the trend of the recent holdings of the Courts, particularly the United States Supreme

Court, the Master finds that a labor dispute is involved
170 herein and that under the provisions of the Norris-LaGuardia Act the Master is prohibited from enjoining peaceful picketing of the stores purchasing and distributing the so-called cut-rate products of the Plaintiff Dairies.

40. The further question is raised herein as to whether or not under the showing in this cause defendants have committed such acts of violence as to entitle the Plaintiffs to an injunction under the provisions of Section 107 of the Act above quoted.

41. In the case of "*Goldfinger* v. *Feintuch*" decided by the Court of Appeals of the State of New York December 7, 1937, 11 N. E. (2d) Page 910, the facts were somewhat analogous to the case at bar. In that case the picketing was done at stores handling the alleged non-union product. The Court in disposing of the case said:

"Within the limits of peaceful picketing, however, picketing may be carried on not only against the manufacturer but against a non-union product sold by one in unity of interest with the manufacturer who is in the same business for profit. Where a manufacturer pays less than union wages, both it and the retailers who sell its products are in a position to undersell competitors who pay the higher scale, and this may result in unfair reduction of the wages of union members. Concededly the defendant union would be entitled to picket peacefully the plant of the manufacturer. Where the manufacturer disposes of the product through retailers in unity of interest with it, unless the union may follow the product to the place where it is sold and peacefully ask the public to refrain from purchasing it, the union would be deprived of a fair and proper means of bringing its plea to the attention of the public."

171 In the above mentioned case it was held that the union had the right to follow the non-union product into the hands of the distributors, who were independent dealers, and to picket their place of business in order to bring to the attention of the public the fact that they were handling non-union goods. One of the Justices specially concurring in said opinion, did so on the sole and only ground that there was a unity of interest between the manufacturer and the retail dealer, under which circumstances he held that the union had a right to allow the goods and to peacefully picket the retail stores in question: that in the absence of such unity of interest to picket such stores would amount to a "secondary boycott". The meaning of

the expression "unity of interest" is not clearly defined. The only unity of interest disclosed by said opinion is the interest that the manufacturer had in seeing that his products were sold by said retail stores to the public. In the instant case the Plaintiff Dairies have a like unity of interest in seeing that their products are sold by the cut-rate stores to the public. It will be further noted that the most recent decisions of the United States Supreme Court as well as of the State Court show a trend towards the right of a labor union to bring to the attention of the public the fact that non-union made goods are being dealt in by the retailer. These decisions are in harmony with the constitutional right of the freedom of speech. It, there-
172 fore, follows that there being a unity of interest there is no secondary Boycott.

42. As to whether or not the acts complained of in the case at bar constitute such violence as to entitle the plaintiffs to an injunction even though a labor dispute exists, the Norris-LaGuardia Act provides that before such injunction may issue certain findings must be made by the Court as provided in Subdivisions (b), (c), (d) and (e) of Section 107 thereof above quoted.

43. The Master further finds that the Plaintiffs have not established the fact that they have no adequate remedy at law and have not alleged or proved that the public officers charged with the duty to protect their property are unable or unwilling to furnish adequate protection. In conformity with the rule laid down in the case of *Lauf* v. *Shinner*, Supra, the absence of such findings renders the Court powerless to issue such injunction as prayed for by said Plaintiffs.

44. It also appears from the evidence before the Master that certain of the cut-rate milk stores that handled the products of the Plaintiff Dairies were picketed by members of the Defendant Union; that such picketing was usually indulged in for a number of days during which
173 time said pickets sought to induce the offending storekeepers to discontinue the purchase of such milk from the Plaintiff Dairies; that in several instances where their efforts were unsuccessful said pickets were withdrawn and within a few days thereafter, usually during the night the store of the storekeeper (some of whom were poor women struggling to make a living) was either bombed or bricks were thrown through the plate glass windows of such stores or other acts of violence were committed. To request the Master to conclude and find, in the absence of proof of the

identity of the guilty culprits, that there was no connection between such acts of violence and the Defendant Union, or some of its members, is to overtax the credulity of the Master.

The Master cannot condone or too severely condemn the resort to such malicious and cowardly conduct in support of any cause. Such lawless conduct has no place under our form of Government and the few lawless, radical union leaders or members who resort thereto are not only a blight upon the righteous cause of honest labor but reflect discredit upon our country and upon our American civilization as well.

Conclusion.

The Master, therefore, recommends that an Order be
174 entered herein denying the relief prayed for and dismissing the Bill of Complaint for lack of jurisdiction.

Respectfully submitted this 6th day of August, A. D., 1938.

Charles A. McDonald,
Master in Chancery, United States District Court.

175 In the District Court of the United States

For the Northern District of Illinois,

Eastern Division.

Lake Valley Farm Products, Inc., a Corporation, *et al.* *vs.* Milk Wagon Drivers' Union, Local 753, *et al.*	In Equity, No. 16073.

MASTER'S CERTIFICATE OF SERVICES.

The undersigned, Charles A. McDonald, Master in Chancery, to whom as such Master, the question of a Preliminary Injunction was referred pursuant to an Order of Court entered herein on May 23, 1938, respectfully reports that he rendered services as hereinafter shown:

Carefully examined the lengthy Bill of Complaint and the Answer thereto.

May 24, 1938, held conference with attorneys Arthur Seelig and David Riskind.

May 25, 1938
May 26,
June 1,
June 3,
June 6,
June 7,
June 9,
June 10,
June 11,
June 15,
June 20,
June 22,
June 27,
June 30.
} Held hearings on said dates at which times testimony on said Bill of Complaint and Answer was taken.

June 27, 1938, received Defendant's abstract of evidence consisting of 110 typewritten pages.

July 5, 1938
July 7, 1938
} Held hearings and heard Argument of respective counsel.

July 7, 1938, received Defendant's memo of authorities, consisting of 64 typewritten pages.

Received Plaintiff's briefs and citation of authorities, consisting of 65 typewritten pages.

July 13, 1938, received Plaintiff's reply to Defendant's argument and comments on defendant's authorities, consisting of 14 typewritten pages.

176 Carefully read and examined the aforesaid documents and numerous cases therein cited, which consumed many days of the Master's time. In addition to the time spent at the hearings which approximated ten full days in time the Master spent upwards of twelve full days in time in analyzing and considering the evidence, briefs and authorities above cited, and thereafter prepared the Master's Report which is filed herewith, for which services he has not been compensated.

In the opinion of the Master the fair and reasonable charge for services rendered herein, is the sum of Twenty-Five Hundred Dollars ($2500.00).

The attorneys for the respective parties have approved this charge as fair and reasonable and each have agreed to advance half thereof.

The Master therefore respectfully requests that he be allowed the sum of Twenty-Five Hundred Dollars ($2500.00) for the above enumerated services, and that said amount

be taxed as costs herein in such manner as the Court may see fit.

Respectfully submitted this 6th day of August, A. D., 1938.

Charles A. McDonald,
Master in Chancery, United States District Court.

278 And on, to wit, the 18th day of August, 1938, came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court their certain Exceptions to Master's Report, with the exclusion of certain pages and certain exhibits, in words and figures following, to wit: Filed Aug. 18, 1938.

279 DISTRICT COURT OF THE UNITED STATES OF AMERICA.

* * (Caption—16073) * *

EXCEPTIONS OF PLAINTIFFS TO MASTER'S REPORT.

To the Honorable, the Judges of the District Court of the United States, for the Northern District of Illinois, Eastern Division:

Now come the Plaintiffs, Lake Valley Farm Products, Inc., a corporation; Amalgamated Dairy Workers Local, Industrial Union No. 819, a voluntary unincorporated Association; Josef Wagner, doing business as Wagner Dairy Products; Lake View Cooperative of Watertown, Wisconsin, an Agricultural Cooperative Corporation of the State of Wisconsin, and hereby except to the report of the said Charles A. McDonald, a Master in Chancery of this Court, which report was heretofore filed in this Court, on August 8th, 1938, in the following particulars, to wit:

280 First Exception.

That the Master erred in his conclusions concerning Interstate Commerce which are set forth and contained in Paragraphs 28 to 31 both inclusive appearing at Pages 16 to 19 of said Report in the following respects:

A. That in Paragraph 28, Page 16, the Master states: "The Plaintiffs contend that the milk in question which is produced in Wisconsin and brought into the State of Illinois in interstate commerce continues to flow in interstate commerce after it is mixed with domestic milk, pasteurized,

bottled, delivered to the cut-rate stores, and is in the course of delivery to the consumers." And at the end of said Paragraph the Master states: "Many of the cases involving the question of taxation by different states lay down strict rules as to when interstate commerce ceases and the handling of the product becomes purely interstate."

B. At the beginning of Paragraph 29, Page 17, the Master states: "There are also numerous cases pertaining to common carriers which follow a rule of law somewhat at variance with the rule contended for in labor cases of this character."

C. The Plaintiffs urge that the Master erred in interpreting the question, in that any cases concerning the right of taxation by a local state, or cases concerning common carriers have absolutely no application to the case at bar; that all of the cases which determine at what point a shipment ceases to be in interstate commerce are cases involving the right of a state to tax or are transportation or similar cases, neither of which groups is at all applicable to the case at hand.

D. Continuing with Paragraph 29, the Master says: "One of the more recent decisions of the United States Supreme Court, analogous to the case at bar, is contained in the case of *Schechter Corporation* v. *The United States*, 281 295 U. S. 495, in which the N. R. A. Act was declared unconstitutional Mr. Chief Justice Hughes in passing upon the question involved therein, used the following language:

"The undisputed facts thus afford no warrant for the argument that the poultry handled by the defendants at their slaughter house markets was in a 'current' or 'flow' of interstate commerce and was thus subject to congressional regulation. The mere fact that there may be a constant flow of commodities into a state does not mean that the flow continues after the property has arrived and has become co-mingled with the mass of property within the state and is there held solely for local disposition and used. So far as the poultry here in question is concerned, the flow in interstate had ceased. The poultry had come to a permanent rest within the state. It was not held, used or sold by defendant in relative to any further transactions in interstate commerce and was not destined for transportation to other states."

It will be noted that the poultry in question had come to a permanent rest within the State in question; that it was not held, used or sold in relation to any further transactions in interstate commerce and was not destined for trans-

portation to other states. In that respect, the case is similar to the case at bar and is an authority bearing directly on the question involved herein."

E. The above quotation has been set forth at length from the Master's report in order that the error of the Master will be apparent. The Master is in error in using the Schechter case to determine this question, for the reason that the Supreme Court in that case was not called upon to consider the question of Restraint of Trade, as in the present case, but to determine an entirely different question, i. e. the extent to which the delegation of power may reach in the regulation of wages and hours in a local industry. Any reference in the Schechter case to interstate commerce is merely incidental and only to the effect that the delegation of power does not extend to the control of wages and hours in the local poultry business. This
282 case never was authority in the case at bar and particularly since the National Labor relations cases 301 U. S. 1, which determine that labor relations may be the subject of Federal regulation and very greatly expanded the concept as to the inclusiveness of the term "Interstate Commerce," this case is probably not authoritative on any subject.

F. The Master erred in Paragraph 30, Page 18, in his comments on the Baldwin *vs.* Seelig case, when he stated that this case "is not an authority supporting the proposition that milk distributed or being sold in the State of New York after being pasteurized, is still flowing in interstate commerce." Whether or not this case is authoritative as to this point is not material, for the reason that the Court is not concerned with the question of whether or not the product is still flowing in interstate commerce, but is concerned only with the problem of the effect of the act or acts upon interstate commerce. This and this question only must be determined in Restraint of Trade cases.

G. In the case of Henneford *vs.* Silas, Mason Company referred to by the Master, (Paragraph 30) the United States Supreme Court commented on the Baldwin *vs.* Seelig case, as the Master has there indicated, and the construction given by the Supreme Court is the same as is placed upon the Baldwin case by the Plaintiffs and is in support of the Plaintiffs' contention as to interstate commerce.

H. In the Henneford case, the United States Supreme Court determined that although the New York Milk Control Act was ostensibly operative only as to local sales, that it, in effect, projected itself outside the borders of New York and affected sales in a foreign state and thereby af-

fected interstate commerce. This is exactly what the Plaintiffs contend in the present case. The Plaintiffs contend that although picketing and violence are ostensibly directed
at local transactions, that their direct effect is to ex-
283 tend beyond the State of Illinois and to burden and
restrain interstate commerce. When it is considered that from the point of local sale back to the point of shipment in the foreign state, is only a matter of hours, there can be no question as to the direct and immediate effect of such acts of interference. Just as in Restraint of Trade cases such as the present case, the question to be determined is the effect upon interstate commerce and not the point at which the interference is ostensibly applied.

I. At Paragraph 31, Page 19, the Master states, "This cause viewed in the light of the Court's reasoning in the above referred to cases convinces the Master that the milk resting in the store of the cut-rate retailer had ceased to flow in interstate commerce; that, therefore, the acts complained of do not constitute such an interference with interstate commerce as would bring the case within the purview of the Sherman Anti-Trust law or the Clayton Act." The cases referred to by the Master in the foregoing quotation are; Baldwin *vs.* Seelig, Schechter *vs.* United States and Henneford *vs.* Silas Mason Company and none of these cases were Restraint of Trade Cases and the Sherman or Clayton Acts were not involved, and hence these cases could not possibly have so held. To go to cases on other subjects and select isolated quotations presumably applicable is misusing or misconstruing the law. There is no scarcity of law in the hundreds of Restraint of Trade cases to determine the case at bar.

294 Second Exception.

Labor Dispute.

In determining as to the existence of a labor dispute, the Master at Paragraph 32, Pages 19, 20 and 21 partially sets out certain sections of the Norris-LaGuardia Anti-Injunction Act, and further treats this topic in paragraphs 32 to 36 of the Report.

A. At Paragraph 33, Page 21, the Master says that
295 whether a labor dispute exists, is not entirely free
from doubt and then the Master quotes most extensively from the case of *Lauf* v. *Schinner*, 303 U. S. 323.

The Master erred in using the Lauf *vs.* Schinner case as a criterion, because the facts and the statute involved in that

case were entirely different then in the present case. In that case the facts differed in that the situation did not involve picketing at stores of third parties; the case was not determined on the question of secondary boycott; (which is the real issue in this case); the plaintiffs did not have a written agreement with the Union as to collective bargaining; the Norris-LaGuardia Act was not involved, but rather the Wisconsin State Anti-Injunction Act was considered, which State act is materially broader than the Norris-LaGuardia Act, and which State act expressly excludes cases involving secondary boycott. In addition, no acts of violence were involved and vigorous efforts at organization were present. The very quotations selected by the Master indicate the dissimilarity of fact and law from the present case.

298 E. That by virtue of the foregoing the Master has erred in his conclusion as to the legal issue involved as to the existence of a labor dispute as defined by the Norris-LaGuardia Act.

Third Exception.

That the Master erred in paragraph 38 when he states that the contracts between the Plaintiff Union and Plaintiff Dairies are "at most—only temporary agreements," etc. The contracts by their very terms provide that the Plaintiff Dairies accept the Plaintiff Union as the sole bargaining representative of all of their workers for the period of one year.

299 Fourth Exception.

That the Master erred in paragraph 38 in his finding that the Plaintiff Dairies are not operating under a contract, fixing specific hours of work and wages, etc., for the reason that such question is not involved in this case and need not be considered. That if all of the workers have designated one union as their representative and such union has been recognized by the employer, that another union may not interfere with such designation.

Fifth Exception.

That the Master erred in paragraph 39 of the Report in his finding that a labor dispute is involved for the reason that no such dispute is involved because the Plaintiff Union has been designated as the sole representative of all of the Plaintiff Dairies' workers; that contracts recognizing such designation are in effect, no actual dispute exists as to

terms or conditions of employment between the workers of the Plaintiff Dairies and any persons whatsoever, but that the picketing and violence are means used by the defendants to carry out and give effect to a secondary boycott, by which means the defendants seek to prevent the sale of cut-rate milk and to effect a monopoly of milk distribution in restraint of trade.

Sixth Exception.

The Master erred in paragraph 41 in applying the case of Goldfinger *vs.* Feintuch as to the right to picket independent stores seeling a manufacturer's product for the following reasons: (a) This case is a decision of the State Court of New York and is not the Law of this District or this Tribunal. (b) This case has construed the pro-
300 visions of the New York Anti-Injunction Act, which Act, as is apparent from the decision of the case, is considerably more inclusive in its terms than the Norris-LaGuardia Act. (c) As is apparent from the Master's report, the Company operated a non-union shop. (d) Only one union was involved, so that the same could constitute a "labor dispute." (e) The union involved had sought by bona fide means, to represent the unorganized workers, so that an actual dispute as to the right of representation existed. None of these circumstances are present in the instant case.

Seventh Exception.

The Master erred in Paragraph 41 in concluding that there is no secondary boycott, for the reason that the Master failed to make any finding of facts upon which such conclusion could rest.

302 Ninth Exception.

The Master erred in paragraph 43 in finding that plaintiffs have not established the fact they have (a) no adequate remedy at law and have (b) not established that the public officers charged with the duty to protect their property are unable or unwilling to furnish adequate protection. The Transcript indicates otherwise, and witness Weiss, on behalf of Lake Valley Dairy, at the opening of the case testified that fifteen to twenty stores distributing their products had been lost in the month preceding the filing of the case, by virtue of the acts of the defendants, (Transcript 133); and testified that twenty-five to thirty stores had been

similarly lost during the pendency of the proceeding, (Tr. 1230); that there was no way to ascertain the number of patrons that had been so lost, (Tr. 134); that the picketing of the Defendant Union causes a diminution of business, (Tr. 127); that more than one hundred plaintiff stores had been picketed, (Tr. 124); that the entire history of independent cut-rate milk distribution in the city of Chicago is filled with numerous instances of mombings of dairy plants, smashing of machinery, overturning of delivery trucks, kidnaping of drivers and delivery equipment, smashing of windows, throwing of stench bombs, sitting fire to and the committing of various other acts of violence and destruction to the property and person of the independent stores distributing cut-rate milk and the storekeepers operating the same, (Tr. 111, 112, 113); and that the witness Frank Wagner, on behalf of the plaintiff, Wagner Dairy Products similarly testified, (Tr. 336 to 340); to the same effect are the witnesses Entin, Tr. 2; Sitko, Tr. 16; Bazik, Tr. 34; Fischer, Tr. 41; etc.; that 2500 to 3000 independently owned stores distribute the products of the independent cut-rate dairies of Chicago (Weiss-Transcript 100); that the acts of the defendants have prevented the delivery of other necessary supplies into the stores selling 303 cut-rate milk, (Wagner, Tr. 335); Sitko, Tr. 23; Moorhatch, Tr. 61), etc.; the defendant, Bryant, admitted that deliveries to cut-rate stores had been prevented, (Tr. 862); that both plaintiff dairies had made complaints and reported acts of violence and other illegal acts to the police and state's attorney in every year from 1932 to the present time, (Tr. 262 to 266, 349, 351 and 352), etc.

That the Master further erred in that if the above specific findings had been made, that said findings would establish that the Plaintiffs have no adequate remedy at law and that the plaintiffs have sought aid from the local authorities, but that by the very nature of the facts and the great number of distribution points involved, that protection against violence cannot be afforded by the local authorities.

Tenth Exception.

That the Master erred in his conclusion recommending that the Bill of Complaint be dismissed for lack of jurisdiction, for the reason that the order of reference to said Master was only for the purpose of considering as to the issuance of injunction and the Master is therefore without power or authority to consider or recommend as to the dismissal of the action.

Eleventh Exception.

That the Master erred in failing to make pertinent specific findings of fact upon which could be based a legal conclusion as to whether or not the acts of the defendants constitute a restraint of trade or monopoly of interstate commence as defined by the Sherman Act and Clayton Act.

Twelfth Exception.

That the Master erred in failing to make specific find-
304 ings of facts as to Interstate Commerce as follows: that the Plaintiff Lake View Cooperative of Watertown, Wisconsin ships daily about 70,000 pounds of fluid milk by tank truck from Wisconsin to the dairy plants of the plaintiff Lake Valley and other Chicago dairies, (Darcy 140; Weiss, 87 and 88, 193); that part of the milk received daily by the Wagner Dairy Products is produced in the State of Wisconsin, (Tr. 322 and 323); that approximately 40% of all of the milk sold in the Chicago area is produced in and shipped from States other than Illinois, (Tr. 89, 141, 147, 328); that approximately 75% of all of the cream sold in the Chicago area is separated from milk produced in States other than Illinois, (Tr. 90, 145, 328); that foreign milk is commingled, sold in competition with, and is indistinguishable from domestic milk distributed in the Chicago area, (Tr. 140 and 141, 90, 328); that upon receipt by the Plaintiff Dairies the milk is at once pasteurized and bottled, which are automatic processes and require but a very short time in all, (Weiss, Tr. 91, 196 and 197; Wagner, 325; Lamson 571 and 572); that pasteurization requires only about one-half hour; that nothing is added to or taken from the milk in such process, (Weiss 91, 196; Wagner 325; Lamson 571); that immediately after bottling the milk is distributed to the stores selling the same, (Weiss, 92; Wagner, 326); that only a few hours separate the receipt at the store from the point of origin in Wisconsin, (Weiss 92, Wagner, 326, Lamson, 573); that the delivery equipment used in distributing the Plaintiff Dairies' milk has been overturned, dumped into the Chicago River, burned and subjected to other violence, (Weiss, truck in river; 113, Wagner, tank truck seized by the Defendant Union, 346 to 350; Kuellman, truck seized and set fire to, 462 to 464; Defence Counsel Riskind admits Defendant Union paid $1125.00 to compensate for destruction of Lake View Dairy delivery truck, 1081;) etc., etc.

That if the above specific findings of fact had been
305 made the direct relationship of milk distribution to
Interstate Commerce would have been established and the acts of the Defendants would be shown to directly burden and restrain Interstate Commerce in violation of the Sherman Act.

Thirteenth Exception.

That the Master erred in failing to make pertinent specific findings of fact upon which could be based a proper legal conclusion as to whether or not a labor dispute exists as defined by the terms of the Norris-LaGuardia Act.

Fourteenth Exception.

That the Master erred in failing to make specific findings of fact as to whether or not a Labor Dispute exists as defined by the terms of the Norris-LaGuardia Act, as follows: that the Plaintiff Union represents all of the workers of the Plaintiff Dairies, and that all of said workers are members of the Plaintiff Union (Tr. 155, 330, etc.); that written agreements exist between the Plaintiff Union and the Plaintiffs Dairies wherein the Plaintiff Union is designated as sole representative for collective bargaining of all of the dairy workers, (Wagner, Tr. 329; Weiss, 368; Igoe, 157 and 275); that the Defendant Union has made no attempt to organize the Plaintiff Dairies, (Defendant Bryant admits never talked to either workers or employees of Lake Valley Dairy, (Tr. 856, 884); Defendant Sumner admits same, (Tr. 994); no testimony appears as to any attempts at organization); that the Defendant Union is a craft union to which only employees of the designation of milk wagon drivers, may be members, (Defendant Sumner, 973); (Defense Counsel Riskind, 333; etc.); that the vendors of the Plaintiff Lake Valley Farm Products are not employees, but "independent contractors", (Weiss,
94; Igoe, 283, etc.); that vendors such as distribute the
306 products of the Plaintiff Lake Valley Farm Products
are not amenable to membership in the Defendant Union, (Defendant Bryant, Tr. 820, 851, 853; answer of the Defendants, paragraphs 26, 28, 32, 37, 43, etc. Constitution and By-Laws of Defendant Union); that distributors of the Lake View Dairy were denied membership in the Defendant Union because said dairy sold its products at cut-rate prices, (Weiss, 1169); that the Plaintiff Union had not sought to organize any of the workers of dairies

employing members of the Defendant Union, (Igoe, Tr. 156, etc.).

That if the above specific findings of fact had been made the fact that no labor dispute existed would have been evident.

Fifteenth Exception.

That the Master erred in failing to make pertinent specific findings of fact upon which could be based a proper legal conclusion as to whether or not the acts of the Defendants constitute an enjoinable secondary boycott and conspiracy to ruin Plaintiff Dairies' businesses.

Sixteenth Exception.

That the Master erred in failing to make specific findings of fact showing that the acts of the Defendants constitute an enjoinable secondary boycott and conspiracy to ruin Plaintiff Dairies' businesses, as follows: that the cut-rate milk distribution in the Chicago area has been subjected to continuous violence during its operation over the past five years, (Weiss 111 to 122, Wagner 334, etc., Bryant 824), that during such period, cut-rate dairy plants have been bombed machinery smashed, workers beaten and various other acts of violence purpetrated, (Weiss 111 to 122; Wagner 338, etc.); that during said time and at the present time, independently owned stores distributing cut-rate
307 milk have been bombed, set afire, have had windows broken, stench bombs have been thrown into the premises and other acts of violence perpetrated, (Weiss, 111 and 112; Wagner 338, etc., Igoe, 276 and 277; Wilson 170; Entin 9; Bazik 40; Fischer, 43; Kuellman, 461); that the picketing by Defendant Union and violence has taken place only at stores selling cut-rate milk, (Wagner, 334; that 50 to 100 stores picketed at present time, 337; Weiss 67, 114 to 122; Defense Witness Wald, 728, etc.); that the pickets of Defendant Union have stopped deliveries of other needed food products into the stores, (Wagner, Tr. 335; Moorhatch, Tr. 61; Entin, 6; Sitko, 23; Defendant Bryant admits same, 862 and 863); that delivery trucks have been subjected to violence, (Lake View Dairy truck dumped in river, 113; Wagner dairy tank truck seized . . . 346 to 350; Lake View truck destroyed and paid for by Defendant Union, 1081; cut-rate truck burned, 462-464); that the Defendant Union's attorney has defended various of its members for acts of violence to cut-rate stores, (Riskind admits, Tr. 1084; Defendant Sumner admits, 1200; 463); that pickets have prevented

ingress to cut-rate stores, (Sitko, 20; Bruce 1000, etc.); that the real purpose of picketing and violence is to prevent sale of cut-rate milk, (348, 1175, 169, 49, etc.) that cut-rate distribution effects savings of about 3¢ per quart, (Plaintiff Witnesses: Wagner, 334, 340, Weiss, 97; Igoe, 148; etc., Defendant Witnesses: Gerstein, 637; Shostook, 670; Cavico, 682; Job, 690; Wald, 733; Richards, 768; Stelle, 782, etc.); that each cut-rate driver by making only 10 to 15 wholesale stops distributes 4 to 5 times as much milk daily as does a Defendant Union retail driver by making approximately 120 stops, (same transcript pages as the foregoing); that because fewer stops are made the Plaintiffs' distributor work shorter hours than the Defendant and retail routemen, (Igoe testifies, 4 to 5 hours daily, 149 and 150, 163, etc.); that Defendants admit opposition to the cut-rate vendor method of distribution, (Bryant 837 and 838, 853 and 854; Sumner 951 and 967, etc.); that in cases where picketing was not successful in causing the store 308 to discontinue selling cut-rate milk, that the pickets were removed and the windows smashed, (Wagner 336; Hall, 473); that the Defendant Union has circulated a circular amounting to a blacklist against the Plaintiff Dairy (Bryant, 917)

That if the above specific findings of fact had been made that the same would demonstrate that the Defendants have conspired to ruin the Plaintiff Dairies' businesses and that the acts committed by the Defendants are the means employed to give effect to and carry out such boycott.

Seventeenth Exception.

That the Master erred in failing to make specific findings of fact showing that the acts of the Defendants constitute a conspiracy and monopoly in unlawful restraint of Interstate Commerce.

Eighteenth Exception.

That the Master erred in failing to make specific findings of fact showing that the acts of the Defendants constitute a conspiracy and monopoly in unlawful restraint of trade and commerce, as follows: that the defendants, as officers of the Defendant Union, receive high salaries and are elected for life, (Bryant, Tr. 872 and 875 to 878, Sumner, 993); that no general election has been held by the Defendant Union since 1916, (Bryant, 874); that members of the Defendant Union distribute the major portion of all milk sold in the Chicago area, and represent the workers of all

dairies, except a few cut-rate dairies, (Bryant 902, Wagner 344); that approximately 80% of all of the members of the Defendant Union are employed by the five largest dairies in the city of Chicago, (Bryant, 886, Sumner, 974); that if the small number of cut-rate dairies were eliminated, that the Defendant Union would control all milk distribu-
309 tion, (Wagner, 346; Bryant, 902, etc.); that the Defendant Sumner admitted that he and the Defendant, James Kennedy were arrested for the beating of employees of the Blue Ribbon Dairy, a cut-rate dairy, (1202); Defendant Sumner admits that he, together with certain milk dealers and others were indicted in connection with the Good Fellowship Club in 1925, which Club was forced to disband by action of the State's Attorney as a cloak for price fixing and terrorism (1202 to 1208); that the Defendants, Sumner, Fitchie, Bryant and others, were indicted by the Superior Court of Cook County, Illinois in 1921 on a charge of conspiracy (1212); that the Supreme Court of the State of Illinois in 1919 confirmed a sentence against the Defendant Sumner for violating a labor injunction and that Sumner actually served thirty-two days of a jail sentence therefor, (1216); that Sumner was arrested in 1908 for slugging a milkman and indicted in 1905 for conspiracy to injure business, (1217, 1221).

That if the above specific findings of fact had been made, the special interest of the Defendant Union and its officers in preventing cut-rate competition would have been shown and a proper conclusion and finding could be made as to conspiracy and monopoly to unlawfully restrain Interstate Commerce.

Nineteen Exception.

That the Master erred in failing to find that the acts of violence in Paragraph 44 are one of the means used by the Defendants to give effect to and carry out the purposes of an unlawful boycott and conspiracy to ruin the business of Plaintiff Dairies.

Twentieth Exception.

That the Master erred in failing to find that the picketing by the Defendants is but one of the means used by the Defendants to give effect to and carry out the purposes of an unlawful boycott and conspiracy to ruin
310 the business of Plaintiff Dairies, under the guise of a pretended Labor Dispute.

Twenty-first Exception.

That the Master erred in failing to find that the acts of the Defendants, violate the terms of the Sherman and Clayton Anti-Trust Laws.

Twenty-second Exception.

That the Master erred in failing to find that the acts of the Defendants burden and restrain and tend to create a monopoly of trade and commerce, as defined by the Anti-Trust Laws of the United States.

Twenty-third Exception.

That the Master erred in failing to find that no labor dispute exists as defined by the terms of the Norris-LaGuardia Act.

Twenty-fourth Exception.

That the Master erred in failing to find that the Defendants had made no effort to organize the workers of the Plaintiff Dairies.

Twenty-fifth Exception.

That the Master erred in failing to find that the Defendants seek to prevent the sale of cut-rate milk in the Chicago area and to unlawfully control the distribution thereof and the price to be paid therefor.

Twenty-sixth Exception.

That the Master erred in failing to rule upon and make specific findings of fact as requested in written motions filed by the respective parties and as set out in the copy of such "Request for Findings" filed with the
311 Master by the Plaintiffs, copy of which is hereto attached and identified as Exhibit "A".

Twenty-seventh Exception.

That the Master erred in Paragraph 26 of the Report in overruling and failing to consider the written motions of the respective parties to strike out certain parts of the testimony, copy of Plaintiffs' motion to strike being attached hereto as Exhibit "B", for the reason that the

Master in said paragraph admits that some of the testimony is no doubt inadmissible, and that the rules and practice of this Court require that such motions be considered and acted upon.

Twenty-eighth Exception.

That the Master erred in failing to find that the Court had jurisdiction under the Laws of the United States relating to Trusts and Monopolies.

Twenty-ninth Exception.

That the Master erred in failing to recommend that the Plaintiffs have no adequate remedy at law and will suffer irreparable damage unless an injunction issue.

Thirtieth Exception.

That the Master erred in failing to recommend that an injunction without bond issue forthwith against the Defendants, as prayed for in the Bill of Complaint herein.

Wherefore the Plaintiffs, Lake Valley Farm Products, Inc., a corporation, Amalgamated Dairy Workers Local, Industrial Union No. 819, a voluntary unincorporated Association; Josef Wagner doing business as Wagner
312 Dairy Products; Lake View Cooperative of Watertown, Wisconsin, an Agricultural Cooperative Corporation of the State of Wisconsin, ask that the Report of the Master be not confirmed or approved by the Court, but that the Court shall overrule the same and that the Court make the necessary findings of fact and conclusions of law as indicated hereinabove and in the Plaintiffs' Request for Findings, a copy of which is hereto attached as Exhibit "A" and order that an injunction without bond issue forthwith as prayed for in the verified Bill of Complaint herein.

Arthur R. Seelig,
Attorney for Plaintiffs.

313 EXHIBIT "A".

DISTRICT COURT OF THE UNITED STATES OF AMERICA.
* * (Caption—16073) * *

PLAINTIFFS' REQUEST FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW.

To the Honorable Charles A. McDonald, Master in Chancery of the District Court of the United States:

Now come the Plaintiffs, Lake Valley Farm Products, Inc., a corporation; Amalgamated Dairy Workers Local Industrial Union No. 819, a voluntary unincorporated Association; Josef Wagner, doing business as Wagner Dairy Products; Lake View Cooperative of Watertown, Wisconsin, an Agricultural Cooperative Corporation of the State of Wisconsin, by Arthur R. Seelig, their attorney, and ask that said Charles A. McDonald, Master in Chancery of the District Court of the United States herein, set forth in his Report to be made herein, the following find-
314 ings of fact and conclusions of law thereon:

Findings of Fact:

1. That the entire process of receiving, pasteurizing, bottling and distributing of milk by the Plaintiff Dairies is a continuous process, and that all milk is distributed to the cut rate stores selling the same within twelve hours after receipt by the Dairies from the country plants.
2. That the process of pasteurizing merely involves the heating of the milk, and that nothing is physically added to or taken from the milk in the pasteurizing process.
3. That Lake Valley Farm Products receives fluid milk from the country plant at Watertown, Wisconsin, by daily shipment in interstate commerce.
4. That the Wagner Dairy Products receives fluid milk daily from the plant at Richmond, Illinois, part of which milk is produced in the State of Wisconsin.
5. That approximately 40% of all of the milk sold as fluid milk in the City of Chicago is produced in states other than the State of Illinois, and shipped into Chicago in interstate commerce.
6. That approximately 75% of all of the cream sold in Chicago is separated from milk produced in states other than the State of Illinois, and that said cream, or the

milk from which said cream is separated, is shipped into Chicago in interstate commerce.

7. That the Wagner Dairy Products, bottles milk, part of which is produced from farms in the State of Illinois, and partly from farms in the State of Wisconsin.

8. That many Chicago dairies bottle milk, part of which is produced in other states and brought into the State of Illinois in interstate commerce.

9. That milk produced in the State of Illinois is inextricably intermingled with milk produced in other states and sold in the City of Chicago.

315 10. That the sale of milk by the Plaintiff Dairies is in direct competition with the sale of milk by other Chicago dairies who receive their milk requirements partly from the State of Illinois, and partly from other states in interstate shipment.

11. That the Defendant Union has never discussed the matter of union membership with any of the workers distributing milk for the Plaintiff Dairies.

12. That no effort has been made by the Defendant Union to organize the workers distributing milk for the Plaintiff Dairies.

13. That the vendors distributing the milk products of the Plaintiff Dairies are independent contractors and not employees.

14. That the cut rate stores distributing the products of the Plaintiff Dairies are independent businesses, the owners of which are not employees of the Plaintiff Dairies.

15. That the picketing conducted by the Defendant Union has not taken place at the dairy plants of the Plaintiff Dairies.

16. That the picketing of the Defendant Union has taken place at the independently owned cut-rate stores distributing the products of the Plaintiff Dairies.

17. That the Defendant Union has none of its members employed by either of the Plaintiff Dairies.

18. That no strike or other dispute concerning wages, hours, or terms or conditions of employment exists between either of the Plaintiff Dairies and any of their respective workers.

19. That all of the employees of Plaintiff Dairies, and vendors distributing the products of such dairies, are members of the Plaintiff Union.

20. That the members of Plaintiff Union have selected and designated the Plaintiff Union as their sole representative for collective bargaining.

21. That written contracts have been entered into between the Plaintiff Dairies and the Plaintiff Union, whereby the Plaintiff Dairies recognizes the Plaintiff Union as the sole bargaining agency of the dairy workers.

316 22. That the picketing by Defendant Union has resulted in the stoppage of the delivery of necessary commodities to the cut rate stores.

23. That acts of violence and destruction have occurred to the stores selling cut rate milk in the City of Chicago throughout the past five years.

24. That during the month of May 1938, the number of pickets of te Defendant Union was increased from 12 to 140.

25. That acts of violence and destruction have occurred to the delivery equipment used in distributing the products of cut rate dairies to cut-rate stores.

26. That the Defendant Union has in certain cases paid sums of money as restitution for the destruction of delivery trucks and other property of cut-rate dairies, committed by members of the Defendant Union.

27. That acts of violence continue to be directed against cut-rate milk stores.

28. That the picketing by the Defendant Union has never taken place at stores not selling cut rate milk, and that all of the acts of violence have taken place at stores selling cut rate milk.

29. That the Defendant Union has admitted to being opposed to the vendor system of milk distribution.

30. That the Defendant Union is opposed to the sale of cut rate milk in the City of Chicago.

31. That all milk wagon drivers with the exceptions of those employed by six or seven cut rate dairies of the City of Chicago are members of the Defendant Union.

32. That the officials of the Defendant Union receive salaries ranging from $9000.00 to $11,000.00 per year, and have been elected to their respective offices for the duration of their lives.

33. That the saving in delivery cost by distribution to cut rate stores as compared with house to house delivery is in excess of 3c per quart.

317 34. That the Defendant Union is a craft union to which milk wagon drivers bearing the relationship of employee to dairies are applicable.

35. That the Plaintiff Union is an industrial union to which all persons engaged in the dairy business regardless

of the nature of the work done or the relationship they bear to the dairy, are acceptable for membership.

36. That the Defendant Union accepts for membership only persons who are employees of dairies.

37. That the By-Laws of, and the form of contract prepared by the Defendant Union, to be entered into between themselves and dairies, refers only to drivers who are employed by the dairy, and independent milk vendors are nowhere named therein.

38. That the Defendant Union has in many instances had the attorney for the union appear in Court to defend members of the Defendant Union arrested for acts of violence and destruction committed against cut-rate dairies and cut rate milk stores.

39. That acts of violence and destruction directed against cut-rate dairies and cut rate milk stores has taken place during the same period during which picketing by the Defendant Union has been carried on.

40. That the Defendant Union has distributed approximately 500,000 copies of a certain circular listing the names of the Plaintiff and other cut-rate dairies.

Conclusions of Law.

1. That the distribution of milk by the Plaintiff Dairies occurs in the current of interstate commerce as determined by the standards applicable to the Anti-Trust Laws of the United States.

2. That any interference with the distribution of milk by the Plaintiff Dairies burdens and affects interstate commerce.

3. That the Plaintiff Union is the sole representative for collective bargaining of all workers engaged in the
318 business conducted by Plaintiff Dairies.

4. That contracts exist between the Plaintiff Union and the Plaintiff Dairies wherein the Plaintiff Union is recognized as the sole representative for collective bargaining for all workers engaged in the businesses of Plaintiff Dairies.

5. That no labor dispute exists and that the provisions of the Norris-La Guardia Act do not apply.

6. That the actions of the Defendants directed against the Plaintiffs constitute a secondary boycott.

7. That picketing of stores distributing Plaintiff Dairies products is one of the means used by the Defendants to carry out and give effect to a secondary boycott.

8. That all of the acts of the Defendants are the means used by the Defendants to carry out and give effect to a secondary boycott.

9. That the acts of the Defendants constitute a conspiracy in restraint of interstate trade and commerce contrary to the Anti-Trust Laws of the United States.

10. That the acts of Defendants constitute a combination in restraint of interstate trade and commerce contrary to the Anti-Trust Laws of the United States.

11. That the acts of the Defendants constitute a conspiracy to prevent interstate shipment of milk by the Plaintiff Lake View Cooperative.

12. That the acts of the Defendants burdens and restricts interstate commerce contrary to the provisions of the Sherman Anti-Trust Act.

13. That the acts of the Defendant Union deny to the Plaintiff Dairies and Plaintiff Milk Cooperative the right to engage in legitimate business and enterprise.

14. That the acts of the Defendants amount to the taking of private property without due process of law.

15. That the effect of the acts of the Defendants is
319 to substantially lessen competition in the sale of milk contrary to the Anti-Trust Laws of the United States.

16. That the acts of the Defendants tend to create a monopoly in the trade and commerce of milk contrary to the Anti-Trust Laws of the United States.

17. That the issues involve a substantial Federal question.

18. That the issues involve an equitable question.

19. That the Plaintiff Dairies and the Plaintiff Milk Cooperative will suffer great and irreparable damage unless a preliminary Writ of Injunction issues.

20. That the Plaintiff Union will suffer great injury unless a preliminary Writ of Injunction issues.

21. That the Plaintiffs have no relief except in a Court of Equity.

Respectfully submitted,
Lake Valley Farm Products, Inc. a corporation, etc., et al.,

Plaintiffs.

By: .....

Their Attorney.

.....

Attorney for Plaintiffs.

Filed Aug. 26, 1938.

320 And on, to wit, the 26th day of August, 1938, came the Defendants by their attorneys and filed in the Clerk's office of said Court their certain Exceptions to Master's Report, in words and figures following, to wit:

321 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—16073) * *

EXCEPTIONS OF DEFENDANTS TO MASTER'S REPORT.

To the Honorable, the Judges of the District Court of the United States, for the Northern District of Illinois, Eastern Division:

Now come the defendants, Milk Wagon Drivers Union, Local 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, a voluntary association; Robert G. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, Alvin F. Richards and Joseph L. Patterson, and hereby except to the report of the said Charles A. McDonald, a Master in Chancery of this Court, which report was heretofore filed in this Court on August 8, 1938, in the following particulars, to-wit:

322 First Exception.

The Master erred in his conclusions concerning acts of violence committed by the defendant Union, or some of its members, as stated in paragraph 44, page 31 of the Master's report, in that the evidence under the law applicable to the same did not sustain said conclusion of the Master.

Second Exception.

The Master erred in failing to find that the evidence under the law applicable to the same did not sustain the allegation in plaintiffs' complaint that the defendants, or any of them, had entered into a conspiracy, the object of which was to restrain trade or injure the business of the plaintiffs.

Third Exception.

The Master erred in failing to expressly and specifically rule on the written motions made and filed by the defendants with regard to the exclusion of evidence.

Fourth Exception.

The Master erred in failing to expressly and specifically make the findings of fact according to the suggested findings of fact submitted by the defendants to the Master at the close of all the evidence.

Wherefore, the defendants, Milk Wagon Drivers Union, Local 753, et al., pray that in all other respects, the report of the Master be confirmed and approved by this Court, and that a decree be entered dismissing plaintiffs' complaint for want of equity and for want of jurisdiction in this Court.

Abraham W. Brussell,
David A. Riskind,
Attorneys for Defendants.

323 And afterwards, to wit, on the 15th day of December, 1938, nunc pro tunc as of November 21, 1938, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Philip L. Sullivan District Judge, appears the following entry, to wit:

Entered Dec. 15, 1938 nunc pro tunc as of Nov. 21, 1938.

324 District Court of the United States of America.

* * (Caption—16073) * *

ORDER OF AMENDMENT.

Before the Honorable Philip L. Sullivan, Judge of the Said District Court, This 21st day of November, A. D. 1938:

This cause coming on to be heard upon the motion of Plaintiffs and upon due notice to the Defendants, the said Defendants being present in open Court upon the signing and entry hereof and not objecting thereto;

It Is Hereby, Ordered, Adjudged And Decreed by the Court that the Bill of Complaint on file herein be and the same hereby is amended in the following particulars:

1. By dismissing "Josef Wagner, doing business as Wagner Dairy Products", as a party Plaintiff in said Bill of Complaint and in these proceedings;

2. By striking from said Bill of Complaint all of
325 Paragraphs 3, 16 and 22 thereof.

3. By striking out from said Bill of Complaint the words "Josef Wagner, doing business as Wagner Dairy

Products'' from the caption thereof and from the 3rd and 4th lines from the bottom of Page 1 thereof; by striking out the words ''and said Wagner Dairy Products'' appearing in Paragraph 17, on the 8th line of Page 10, and by striking out that portion of Paragraph 26, commencing on Line 5, Page 17, and ending on Line 10, Page 17, commencing with the words ''that said bottled milk, etc,'' and ending with the words ''members of the Plaintiff Union herein;'' by striking out the words ''or of Josef Wagner, trading as Wagner Dairy Products'' from Paragraph b appearing upon the 9th and 10th lines of Page 48''.

It Is Further Ordered, Adjudged And Decreed by the Court as follows:

A. That ''Josef Wagner, doing business as Wagner Dairy Products'' be and he hereby is granted the right to withdraw as a party Plaintiff herein.

B. That the amendment herein made to the Bill of Complaint herein be without prejudice to the order of reference to the Master in Chancery heretofore entered herein and without prejudice to the testimony introduced and proceedings had before said Master in Chancery.

C. That the Bill of Complaint herein as amended by this Order stand as Bill of Complaint of the remaining Plaintiffs herein.

D. That the Answer of the Defendants to the Bill of Complaint heretofore filed herein stand as the Answer of the Defendants to the Bill of Complaint as amended by this Order.

E. That the Report of the Master in Chancery heretofore filed herein stand as the Report of the Master in Chancery to the Bill of Complaint as amended by this Order, but subject however to the Exceptions of the parties filed thereto and to all other Exceptions, Objections or other proceedings had or taken with reference thereto.

F. That the entry of this order shall be without prejudice to the Exceptions of both the Plaintiff and of the
326 Defendants heretofore filed to the Master's Report heretofore filed herein and that such exceptions shall continue to stand as the exceptions of the remaining Plaintiffs and of the Defendants to the Master's Report upon the Bill of Complaint as herein amended.

Enter:

Philip L. Sullivan,
Judge.

327 And on, to wit, the 15th day of December, 1938, there was filed in the Clerk's office of said Court a certain Findings of Fact and Conclusions of Law, in words and figures following, to wit: Filed Dec. 15, 1938.

328 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—16073) * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

The above entitled cause came on regularly for hearing in the above entitled Court, Honorable Philip L. Sullivan, Judge of the said court, presiding on the 30th day of November, A. D. 1938, on the Master's Report on application for injunction, the transcript of testimony taken before the Master and the exhibits offered and introduced in evidence as per the order of this court of May 23rd, 1938, and the parties hereto appearing and being represented by their respective counsel, and whereupon, the court having considered the Master's Report, the transcript of testimony taken before the Master including the exhibits offered and introduced in evidence, and having duly considered arguments of counsel, and being fully advised in the premises, now finds the following:

Findings of Fact.

First: On May 21st, 1938, Lake Valley Farm Products, Inc., a corporation, Amalgamated Dairy Workers' Local Industrial Union #819, a voluntary unincorporated association, Josef Wagner, doing business as Wagner Dairy Products, Lake View Co-operative of Watertown, Wisconsin, an agricultural co-operative corporation of the State of Wisconsin, as plaintiffs filed a Bill of Complaint against the Milk Wagon Drivers' Union of Chicago, Local 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, a voluntary association, Robert G. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, Alvin F. Richards and Joseph L. Patterson, defendants. The cause was referred by or-
329 der of Court to Master Charles R. MacDonald, Master in Chancery on May 23rd, 1938, upon the Plaintiffs' application for a preliminary injunction. Various hearings were held before the Master, and evidence both oral and documentary was offered and introduced before the Mas-

ter. On August 8th, 1938, the Master's Report, including the stenographic transcript of testimony and exhibits, was filed in this Court. Both defendants and plaintiffs filed exceptions to this Report.

Second: On November 21st, 1938, plaintiff, Josef Wagner, doing business as Wagner Dairy Products, filed his motion to withdraw as party plaintiff and leave has been granted to said Josef Wagner to withdraw as party plaintiff.

Third: Plaintiff, Lake Valley Farm Products, Inc., an Illinois corporation, is engaged in the business of proceessing and distributing milk and dairy products in the City of Chicago, Illinois, that said plaintiff purchases its daily requirements of fluid milk from the plaintiff, Lakeview Co-operative of Watertown, Wisconsin; the said plaintiff receives its fluid milk from farmers resident in and citizens of the State of Wisconsin; that the said farmers deliver their milk to the country plant of said Lakeview Co-operative of Watertown, Wisconsin, where it is loaded on motor trucks and transported over the public highways from the State of Wisconsin to the plant or factory of the plaintiff, Lake Valley Farm Products, Inc., a corporation, located in the City of Chicago, County of Cook and State of Illinois; that after the receipt of milk at said plaintiff dairy it is pasteurized, and then bottled; that after being bottled the milk is distributed by the plaintiff dairy to various milk stores, grocery stores, delicatessens, food stores and other retail establishments where the said milk is sold at retail to various consumers; that said bottled milk is sold to various persons who own and operate automobile truck equipment, who pick up the said bottled milk and cream at the pasteurizing plant of the plaintiff dairy and thereafter distribute it to said various stores and that persons so operating such delivery truck equipment
330 are commonly referred to as "vendors"; that these individuals are not members of defendant union.

Fourth: Plaintiff, Amalgamated Dairy Workers Local Industrial Union #819 was organized on March 1st, 1938, and maintains executive offices in the City of Chicago, County of Cook and State of Illinois.

Fifth: Plaintiff, Lakeview Co-operative of Watertown, Wisconsin, is a co-operative organization of Wisconsin farmers having its principal place of business in Watertown, Wisconsin.

Sixth: The defendant union was organized in 1902 and since that time has unionized the majority of drivers de-

livering milk and other dairy products, having its headquarters in Chicago, Illinois.

Seventh: Plaintiff, Lake Valley Farm Products, Inc., is an Illinois Corporation. The members of Amalgamated Dairy Workers' Local Industrial Union #819 are residents and citizens of the State of Illinois. The Lakeview Co-operative of Watertown, Wisconsin, is a Wisconsin corporation. The defendant union and all of the individual defendants are residents and citizens of the State of Illinois.

Eighth: That approximately 40% of all of the milk sold in Chicago is produced in and shipped from states other than Illinois; that approximately 75% of all cream sold in Chicago is separated from milk produced in states other than Illinois; that foreign milk is commingled, sold in competition with, and is indistinguishable from milk produced in Illinois; that pastuerization requires only about one-half hour and nothing is added to or taken from the milk in such process; that only a few hours separate the receipt of the bottled milk at the retail store from it point of origin in the state of Wisconsin.

Ninth: The Plaintiff, Lake Valley Farm Products, Inc., is a cut-rate dairy in that it distributes its milk through retail stores at cash and carry sale at prices substantially less than the generally prevailing price for milk delivered by the dairy to the home.

Tenth: Because of the relatively large amount of milk delivered to each retail store by the plaintiff dairy, the
331 cost of delivery is substantially less than the cost of delivering milk on a retail route to the doorstep of the ultimate consumer.

Eleventh: That the growth of the cut-rate milk business in Chicago has been accompanied by violence to the distributing stores, and that stores selling plaintiff dairy's products, have had windows smashed, have been bombed, set afire, stench bombs thrown and have been submitted to other acts of violence; that cut rate dairy plants have been bombed and have had machinery smashed and subjected to other acts of violence; that delivery trucks of cut rate dairies have been kidnapped and destroyed, and other acts of violence committed.

Twelfth: That the picketing by the Defendant Union has all taken place at, and in front of stores selling the products of the plaintiff dairy and no picketing has taken place at the plaintiff dairy plant; that in some instances deliveries of other necessary food products into stores selling plaintiff dairy's products have ceased.

Thirteenth: That no labor dispute exists between plaintiff dairy and its workers.

Fourteenth: Fifteen to twenty stores distributing the products of plaintiff dairy were lost in the month preceding the filing of the present Bill of Complaint; twenty-five to thirty stores were similarly lost since the commencement of the action; that more than one hundred stores of plaintiff dairy have been picketed; that there is no way to ascertain the number of consumer patrons lost by the acts of the defendants.

Fifteenth: The Court adopts by reference the various findings of fact made herein by the Master in his Report.

Conclusions of Law.

From the foregoing facts, the Court concludes:

(1) That this court has no jurisdiction on the ground of diversity of citizenship.

(2) The Court finds that the actions of the defendants do not constitute a violation of the Sherman Anti-
332 Trust Law or the Clayton Act.

(3) The Court finds that the actions of the defendants do not burden or affect interstate commerce as prohibited by the Sherman Anti-Trust Law or the Clayton Act.

(4) The Court finds that the defendants actions do not constitute an unlawful conspiracy, as defined by the Sherman Anti-Trust Law or the Clayton Act.

(5) The Court finds that the defendants did not affect or attempt to affect an unlawful monopoly as defined by the Sherman Anti-Trust Law or the Clayton Act.

(6) The Court finds that the activities of the defendants do not constitute an unlawful secondary boycott to deprive plaintiffs of rights guaranteed to them under the Constitution and laws of the United States of America and of the State of Illinois.

(7) That a labor dispute exists as defined by the terms of the Norris-La Guardia Act.

(8) The Court further finds that it is without jurisdiction to grant the injunctive relief or any part of the relief prayed for by the plaintiffs.

(9) The Court finds that the plaintiffs are not entitled to any of the relief prayed for in the Bill of Complaint and that the equities in this cause are with the defendants.

(10) The Court finds that the plaintiffs are not entitled to a preliminary injunction as prayed for in their bill of complaint. The court further finds that the issues pre-

sented and the evidence offered on the application for the preliminary injunction are identical with any issues that might be made and any evidence that might be offered upon application for a permanent injunction, and that the evidence taken before the Master under the allegations of the Bill of Complaint disclose that this court would be without jurisdiction to entertain application for a permanent injunction, and that the equities on any application for permanent injunction would likewise be with the defendants.

(11) The Court therefore finds that the plaintiff
333 should take nothing by their said complaint and suit and the defendants should have a decree entered on the issues in their behalf and should have judgment for their costs to be fixed by the Clerk of this Court.

Enter:

Philip L. Sullivan,
Judge.

334 And afterwards, to wit, on the 15th day of December, 1938, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Philip L. Sullivan, District Judge, appears the following entry, to wit: Decree: Entered Dec. 15, 1938.

335 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—16073) * *

DECREE.

This Cause Coming on for hearing upon the Bill of Complaint filed by the plaintiffs, the answer filed by the defendants, the Master's Report upon application for temporary injunction, the transcript of testimony taken before the Master including exhibits offered and received in evidence, and the cause having been heretofore argued by counsel and findings of fact and conclusions of law having been heretofore made by this Court, the Court being fully advised in the premises, Orders, Adjudges and Decrees, as follows:

(1) That the suit of Josef Wagner, doing business as Wagner Dairy Products, one of the plaintiffs herein, be and the same is hereby dismissed with prejudice against

said plaintiff only against any further proceedings on the matters alleged in the Bill of Complaint against the defendants herein.

(2) That the exceptions of the plaintiffs to the report of Charles A. McDonald, Master in Chancery of This Court, upon the application for a preliminary injunction, be and the same are hereby overruled, and the application of the Plaintiffs for preliminary and permanent injunction be and the same hereby is denied.

(3) That the complaint of the remaining plaintiffs, namely, Lake Valley Farm Products, Inc., a corporation, Amalgamated Dairy Workers' Local Industrial, Union #819, a voluntary unincorporated association, Lakeview Co-Operative of Watertown, Wisconsin, an agricultural co-
operative corporation of the State of Wisconsin, be
336 and the same is hereby dismissed for want of juris-
diction.

(4) That the complaint of the remaining plaintiffs be and is hereby dismissed for want of equity.

(5) That the amount of the cost bond on appeal shall be in the sum of Two Thousand Five Hundred ($2500.00) Dollars, and that said bond shall also suspend execution for costs taxed in this Court upon its approval by this Court and filing with the Clerk of this Court.

Entered in Open Court This 15th day of December, A. D. 1938.

Philip L. Sullivan,
Judge.

Filed Dec. 23, 1938.

337 And on, to wit, the 23rd day of December, 1938, came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court their certain Notice of Appeal, in words and figures following, to wit:

338 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—16073) * *

NOTICE OF APPEAL TO CIRCUIT COURT OF APPEALS.

Notice is hereby given that Lake Valley Farm Products, Inc., a corporation; Lake View Cooperative of Watertown, Wisconsin, an Agricultural Cooperative Corporation of the State of Wisconsin; Amalgamated Dairy Workers Local, Industrial Union No. 819, Plaintiffs, above named, hereby

appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the Decree heretofore entered in this action on December 15, A. D. 1938, denying preliminary and Final Injunction and dismissing the Bill of Complaint and the said action.

Arthur R. Seelig,
Attorney for Lake View Cooperative of Watertown, Wisconsin, an Agricultural Cooperative Corporation of the State of Wisconsin; Amalgamated Dairy Workers Local, Industrial Union No. 819, Lake Valley Farm Products, Inc., a corporation, Appellants.

339 And on, to wit, the 23rd day of December, 1938, came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court their certain BOND ON APPEAL, in words and figures following, to wit: Filed Dec. 23, 1938.

340 Know All Men by These Presents:

That we, Lake Valley Farm Products, Inc., a corporation; Lake View Cooperative of Watertown, Wisconsin, an Agricultural Cooperative Corporation of the State of Wisconsin, and Amalgamated Dairy Workers Local, Industrial Union No. 819, as principals, and Continental Casualty Company, as surety, are held and firmely bound unto Milk Wagon Drivers' Union, Local 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, a voluntary association; Robert C. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, Alvin F. Richards and Joseph L. Patterson, in the full and just sum of Two Thousand Five Hundred ($2,500.00) Dollars, to be paid to the said Milk Wagon Drivers' Union, Local 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, a voluntary association; Robert C. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, Alvin F. Richards, and Joseph L. Patterson, their attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 23rd day of Decem-

ber in the year of our Lord one thousand nine hundred and thirty-eight.

Whereas, lately at a session of the District Court of the United States for the Northern District of Illinois, Eastern Division, in a suit pending in said Court, as Equity No. 16073, between Lake Valley Farm Products, Inc., a corporation; Lake View Cooperative of Watertown, Wisconsin, an Agricultural Cooperative Corporation of the State of Wisconsin; Amalgamated Dairy Workers Local, Industrial Union No. 819, plaintiffs, and Milk Wagon Drivers' Union, Local 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, a voluntary association; Robert C. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, Alvin F. Richards, and Joseph L. Patterson, defendants, a decree was rendered against the said Lake Valley Farm Products, 341 Inc., a corporation; Lake View Cooperative of Watertown, Wisconsin, an Agricultural Cooperative Corporation of the State of Wisconsin; Amalgamated Dairy Workers Local, Industrial Union No. 819, dismissing said suit, and the said Lake Valley Farm Products, Inc., a corporation; Lake View Cooperative of Watertown, Wisconsin, an Agricultural Cooperative Corporation of the State of Wisconsin; Amalgamated Dairy Workers Local, Industrial Union No. 819, having filed their notice of an appeal to the United States Circuit Court of Appeals for the Seventh Circuit, in the Clerk's Office of the said District Court to reverse the decree of the aforesaid, directed to the said Milk Wagon Drivers' Union, Local 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, a voluntary association; Robert G. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, Alvin F. Richards and Joseph L. Patterson to be and appear at the United States Circuit Court of Appeals for the Seventh Circuit, to be holden at Chicago within the time fixed by the Rules of Civil Procedure.

Now, the condition of the above obligation is such, that if the said Lake Valley Farm Products, Inc., a corporation; Lake View Cooperative of Watertown, Wisconsin, an Agricultural Cooperative Corporation of the State of Wisconsin, and Amalgamated Dairy Workers Local, Industrial Union No. 819, shall prosecute their said appeal to effect, and shall answer all damages and costs that may be awarded against them, if they fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

This Bond shall also suspend execution for costs taxed in the said District Court of the United States upon the approval thereof by said Court and the filing of this Bond with the Clerk of said District Court of the United States for the Northern District of Illinois.

Lake Valley Farm Products, Inc., a corporation,
By: Siegfried Weiss,
President.

(Seal)

Attest:
Jos. T. Shotka,
Asst. Secretary.

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Lake View Cooperative of Watertown, Wisconsin, an Agricultural Cooperative Corporation of the State of Wisconsin,
By: John Mueller,
President.

Attest:
Thos. J. Darcey,
Secretary.

Amalgamated Dairy Workers Local, Industrial Union No. 819,
By: John Igoe,
Vice President.

(Seal)

Attest:
Cass R. Zalewski,
Secretary.

Continental Casualty Company,
By: J. F. Flaherty,
Atty-in-Fact. (Seal)

Sealed and Delivered
In Presence of:
James J. Wagner.
L. Clifford.

Approved by:
Philip L. Sullivan.

Entered Dec. 23, 1938.

343 And afterwards, to wit, on the 23rd day of December, 1938, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Philip L. Sullivan, District Judge, appears the following entry, to wit:

344 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—16073) * *

ORDER.

Before the Honorable Judge Philip L. Sullivan, Judge of the Said District Court of the United States:

On motion of Plaintiffs herein, it is Hereby Ordered, Adjudged and Decreed that the cost bond on Appeal of Lake Valley Farm Products, Inc., a corporation; Lake View Cooperative of Watertown, Wisconsin, an Agricultural Cooperative Corporation of the State of Wisconsin, Amalgamated Dairy Workers Local Industrial Union No. 819, Plaintiffs, wherein said Plaintiffs are identified as principals and Continental Casualty Company, is identified as Surety, said Bond being in the amount of Two Thousand Five Hundred ($2,500.00) Dollars this day presented to the Court, be and the same hereby is approved.

It Is Further Ordered, Adjudged and Decreed that said Bond now so approved by this Court shall act as supersedeas and shall also suspend execution for costs taxed in this Court upon the filing thereof with the Clerk of this Court.

Entered in Open Court this 23rd day of December, A. D. 1938.

Philip L. Sullivan,
Judge.

345 And on, to wit, the 19th day of January, 1939, came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court their certain Designation of Record, in words and figures following, to wit:

346 IN THE DISTRICT COURT OF THE UNITED STATES. Filed Jan. 19, 1939.

• • (Caption—16073) • •

DESIGNATION OF RECORD.

The plaintiffs, Lake Valley Farm Products, Inc., a corporation; Lake View Cooperative of Watertown, Wisconsin, an Agricultural Cooperative Corporation of the State of Wisconsin; Amalgamated Dairy Workers Local Industrial Union No. 819, by Arthur R. Seelig, their attorney, pursuant to Rule 75 of the Federal Rules of Civil Procedure, hereby designate the following portions of the record, proceedings and evidence, to be continued in the record on appeal, in the appeal herein taken by the plaintiffs from the decree entered herein in favor of the defendants on December 14, A. D. 1938, to the United States Circuit Court of Appeals for the Seventh Circuit:

1. Placita.
2. Bill of Complaint (including exhibits attached).
3. Order of Court entered May 23, 1938, that Plaintiff's motion for preliminary injunction be referred to Master in Chancery.
4. Answer of Defendants filed May 27, 1938.
5. Plaintiffs' motion to strike filed August 8, 1938.
6. Defendants' motion to strike filed August 8, 1938.
7. Narrative condensed statement of testimony offered before Charles A. McDonald, Master in Chancery.
8. Plaintiffs' exhibits numbers 1 and 4.
9. Defendants' exhibit number 3.
10. Report of Charles A. McDonald, Master in Chancery, filed August 10, 1938.

347 11. Plaintiffs' Exceptions to the Master's Report, filed on August 18, 1938, together with Exhibit A attached thereto, and excluding only that part commencing with paragraph "J" on Page 5 to and including paragraph "T" on Page 16; and that part commencing with paragraph "B" on page 17, to and including paragraph D on Page 20; and Exception "Eighth" commencing on Page 22 and ending at the bottom of page 23.

12. Order of Amendment entered December 15, 1938.
13. Findings of Fact and Conclusions of Law filed December 15, 1938.
14. Decree entered December 15, 1938.
15. Notice of Appeal filed December 23, 1938.
16. Appeal Bond, filed December 23, 1938.

17. Order approving Appeal Bond, entered December 23, 1938.
18. This Designation of Record and Notice and Proof of Service upon Appellees attached thereto.
19. Statement of Points Relied Upon.

Arthur R. Seelig,
Attorney for Plaintiffs (Appellants).

Notice.

To: David A. Riskind, and
Abraham Brussell,
Attorneys for Defendants (Appellants):

Please take notice that the above and foregoing "Designation of Record" has this day been filed with the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division.
January 19th, 1939.

Arthur R. Seelig,
Attorney for Plaintiffs (Appellants).

Service of a copy of the above and foregoing "Designation of Record," together with copy of "Narrative Condensed Statement of Testimony" and "Statement of Points Relied Upon" therein referred to, filed with the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division is hereby acknowledged this 19th day of January, A. D. 1939.

Abraham W. Brussell,
David Riskind,
Attorneys for Defendants (Appellees).

348 And on, to wit, the 19th day of January, 1939, came the Plaintiffs by their attorneys and filed in the Clerk's office of said Court their certain Statement of Points, in words and figures following, to wit:

349 IN THE DISTRICT COURT OF THE UNITED STATES. Filed Jan. 19, 1939.
* * (Caption—16073) * *

STATEMENT OF POINTS.

The Plaintiffs, Lake Valley Farm Products, Inc., a corporation; Lake View Cooperative of Watertown, Wisconsin, an Agricultural Cooperative Corporation of the State of Wisconsin; Amalgamated Dairy Workers Local Industrial Union No. 819, hereby state the following to be the points of error in the record and proceedings herein upon which the plaintiffs rely on appeal:

1. The Court erred in denying plaintiffs' prayer for preliminary injunction.
2. The Court erred in denying plaintiffs' prayer for final injunction.
3. The Court erred in following the findings of fact of the Master in Chancery to whom this cause had been referred.
4. The Court erred in following the conclusions of law of the Master in Chancery to whom this cause had been referred.
5. The Court erred in not sustaining the exceptions of the plaintiffs to the findings of fact of the Master in Chancery to whom this cause had been referred.
6. The Court erred in not sustaining the exceptions of the plaintiffs to the conclusions of law of the Master in Chancery to whom this cause had been referred.

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7. The Court erred in making the following conclusions of law:

a. That the acts of the defendants do not constitute a violation of the terms of the Sherman Anti-Trust law or the Clayton Act.

b. That the acts of the defendants do not burden or affect interstate commerce as prohibited by the Sherman Anti-Trust law or the Clayton Act.

c. That the actions of the Defendants do not constitute an unlawful conspiracy, as defined by the Sherman Anti-Trust law or the Clayton Act.

d. That the Defendants did not affect or attempt to affect an unlawful monopoly as defined by the Sherman Anti-Trust law or the Clayton Act.

e. That the activities of the Defendants do not constitute an unlawful secondary boycott to deprive plaintiffs

of rights guaranteed to them under the Constitution and Laws of the United States of America and of the State of Illinois.

f. That a labor dispute exists as defined by the terms of the Norris-La Guardia Act.

8. The Court erred in making the Decree entered December 15, 1938, dismissing the complaint for want of equity.

9. The Court erred in making the Decree entered December 15, 1938, dismissing the complaint for want of jurisdiction.

10. The Court erred in making its Decree dismissing the Complaint for the reason that by so doing the Court has deprived the plaintiffs of rights and protections secured to them under the Sherman Anti-Trust Law and the Clayton Act.

11. The Court erred in making its Decree dismissing the complaint for the reason that by so doing the Court has deprived the plaintiffs of their property without
351 due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

12. The Court erred in making its Decree dismissing the complaint for the reason that by so doing the Court has deprived the plaintiffs of their property without due process of law, in violation of Section 2, Article II, of the Constitution of the State of Illinois.

13. The Court erred in making its Decree dismissing the Complaint for the reason that by so doing the Court has denied to the plaintiffs herein, the equal protection of the laws guaranteed to them by the Fourteenth Amendment to the Constitution of the United States.

14. The Court erred in making its conclusions of law, in that:

a. The same are inconsistent with the findings of fact made by the Court.

b. The same are contrary to law.

c. The same are contrary to the evidence.

d. The same are not sustained in any respect by the evidence.

e. The same are contrary to the manifest weight of the evidence.

15. The Court erred in dismissing the complaint and denying the plaintiffs prayer for the issuance of injunction restraining the defendants from committing acts of violence, picketing of stores or other places selling products of the plaintiff dairy, preventing delivery of other

commodities into such stores or other places, for the reason that:

a. The plaintiffs are thereby deprived of their property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

b. The plaintiffs are thereby deprived of their property without due process of law, in violation of Section 2, Article II, of the Constitution of the State of Illinois.

352 c. The plaintiffs are thereby deprived of the equal protection of the laws guaranteed to them by the Fourteenth Amendment to the Constitution of the United States.

d. The same is contrary to the law.

e. The same is contrary to the evidence.

f. The same is not sustained in any respect by the evidence.

g. The same is contrary to the manifest weight of the evidence.

16. The Court erred in dismissing the complaint and denying to the plaintiffs relief by injunction against the acts of the defendants as an unlawful conspiracy and boycott carried out by means of violence, threats of violence, black listing, picketing of independently owned stores or other places selling the products of plaintiff dairy, and the stopping of delivery of other necessary food commodities into such stores or other places, for the reason that:

a. The plaintiffs are thereby deprived of rights and protections guaranteed to them by the Sherman Anti-Trust Law and the Clayton Act.

b. The plaintiffs are thereby deprived of their property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

c. The plaintiffs are thereby deprived of their property without due process of law, in violation of Section 2, Article II, of the Constitution of the State of Illinois.

d. The plaintiffs are thereby deprived of the equal protection of the laws guaranteed to them by the Fourteenth Amendment to the Constitution of the United States.

e. The same is contrary to the law.

353 f. The same is contrary to the evidence.

g. The same is not sustained in any respect by the evidence.

h. The same is contrary to the manifest weight of the evidence.

17. The Court erred in dismissing the complaint and denying to the plaintiffs relief by injunction against the acts of the defendants as in violation of the terms of the Statutes of the United States known as the Sherman Anti-Trust Law and the Clayton Act, for the reason that:

a. The acts of the defendants burden and restrain interstate trade and commerce.

b. The acts of the defendants affect interstate commerce.

c. The acts of the defendants constitute a conspiracy in restraint of interstate trade.

d. The acts of the defendants constitute a combination in restraint of interstate trade and commerce.

e. The acts of the defendants tend to substantially lessen competition in the sale of milk.

f. The acts of the defendants tend to create a monopoly in the interstate trade and commerce of milk.

g. The defendants seek to control and regulate the price of milk in interstate commerce.

h. The acts of the defendants constitute an unlawful secondary boycott in restraint of interstate trade and commerce.

i. The plaintiffs are denied the remedy granted under section 16 of the Clayton Act.

354 j. The plaintiffs are thereby deprived of the equal protection of the laws guaranteed to them by the Fourteenth Amendment to the Constitution of the United States.

k. The same is conrary to the law.

l. The same is contrary to the evidence.

m. The same is not sustained in any respect by the evidence.

n. The same is contrary to the manifest weight of the evidence.

18. The Court erred in taxing any costs against the plaintiffs,

Wherefore the plaintiffs say that upon all these errors, the Decree of dismissal of the District Court of the United States entered herein should be reversed or reversed and remanded.

Arthur R. Seelig,
Attorney for Plaintiffs.

355 And on, to wit, the 27th day of January, 1939, came the Parties by their attorneys and filed in the Clerk's office of said Court their certain Stipulation, in words and figures following, to wit:

356 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—16073) * *

STIPULATION WITH RESPECT TO DESIGNATION OF TRANSCRIPT OF RECORD FOR USE ON APPEAL.

It Is Hereby Stipulated by and between the parties by their respective counsel that the time within which defendants (appellees) may file their designation of additional record for use in transcript of record to be filed on appeal in the above entitled cause in the Circuit Court of Appeals for the 7th Circuit may be extended up to and including Thursday, February 2nd, 1939.

It Is Further Stipulated that the Court may enter an order extending the time within which appellants may file their transcript of record on appeal in the Circuit Court of Appeals for the 7th Circuit up to and including February 18, 1939.

Arthur R. Seelig,
Attorneys for Plaintiffs (Appellants).
David A. Riskind & Abraham W. Brussell,
Attorneys for Defendants (Appellees).

357 And on, to wit, the 2nd day of February, 1939, came the Parties by their attorneys and filed in the Clerk's office of said Court their certain Stipulation, in words and figures following, to wit:

358 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—16073) * *

STIPULATION WITH RESPECT TO DESIGNATION OF TRANSCRIPT OF RECORD FOR USE ON APPEAL.

It Is Hereby Stipulated by and between the parties by their respective counsel that the time within which defendants (Appellees) may file their designation of additional record for use in transcript of record to be filed on appeal in the above entitled cause in the Circuit Court

of Appeals for the 7th Circuit may be extended up to and including February 9, 1939.

It Is Further Stipulated that the Court may enter an order extending the time within which appellants may file their transcript of record on appeal in the Circuit Court of Appeals for the 7th Circuit up to and including February 23, 1939.

Arthur R. Seelig,
Attorneys for Plaintiffs (Appellants).
David A. Riskind & Abraham W. Brussell,
Attorneys for Defendants (Appellees).

Filed Feb. 9, 1939.

433 And on, to wit, the 9th day of February, 1939, came the Defendants by their attorneys and filed in the Clerk's office of said Court their certain Designation for Additional Record, in words and figures following, to wit:

434 In the District Court of the United States.

* * (Caption—16073) * *

DESIGNATION OF ADDITIONAL RECORD.

The defendants, Milk Wagon Drivers' Union, Local 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, a voluntary association; Robert G. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, Alvin F. Richards, and Jospeh L. Patterson, by David A. Riskind and Abraham W. Brussell, their attorneys, pursuant to Rule 75 of the Rules of Procedure of this Court hereby designate the following Additional portions of the record, proceedings and evidence to be contained in the record on appeal to be added to the record previously designated by plaintiffs in this cause in the appeal taken to the United States Circuit Court of Appeals for the Seventh Circuit from the decree in favor of the defendants entered on December 14, A. D. 1938:

1. Amended condensed statement of testimony offered before Charles A. McDonald, Master in Chancery.
2. Plaintiffs' exhibits Nos. 2, 5 and 7, introduced in evidence before Master McDonald.
3. Defendants' exhibits Nos. 5, 6, 7, 8, 9 and 10 introduced before Master McDonald.

435 4. Defendants' exceptions to the Master's Report, filed August 26, 1938.

5. Designation of additional record and notice and Proof of Service upon plaintiffs (appellants).

6. Orders of Court of January 27 and February 2, 1939, extending time for the filing of Designation of Additional Record and the filing of the Transcript of Record on appeal in the Circuit Court of Appeals.

.....

.....

Attorneys for Defendants (Appellees).

Notice.

To: Arthur F. Seelig,
11 South LaSalle Street, Chicago
Attorney for Plaintiffs (Appellants):

Please Take Notice that the above and foregoing "Designation of Additional Record" and "Amended Condensed Statement of Testimony" have this day been filed with the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division.

David A. Riskind,
Abraham W. Brussell,
Attorneys for Defendants (Appellees).

Service of a copy of the above and foregoing "Designation of Additional Record," together with a copy of the "Amended Condensed Statement of Testimony" therein referred to is hereby acknowledged this 9th day of February, A. D. 1939.

Arthur R. Seelig,
Attorneys for Plaintiffs (Appellants).

436 And on, to wit, the 7th day of March, 1939, came the Parties by their attorneys and filed in the Clerk's office of said Court their certain Stipulation, in words and figures following, to wit:

437 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—16073) * *

STIPULATION.

It Is Hereby Agreed And Stipulated by and between the parties hereto by their respective counsel that the Clerk of this Court in making up the transcript of record for use on the appeal to the United States Circuit Court of Appeals for the 7th Circuit, may and shall include the originals of all exhibits referred to in the designation of record previously filed herein both by plaintiffs (appellants) and defendants (appellees) in lieu of copies of said exhibits, said exhibits so referred to being plaintiffs' exhibits 1, 2, 5 and 7 and defendants' exhibits 3, 5, 6, 7, 8, 9, and 10.

It Is Further Agreed And Stipulated by and between the parties hereto that the Clerk in making up the transcript of record for appeal shall include therein the order of Judge Sullivan of February 23, 1939, extending time within which appellants may file their transcript of record on appeal up to and including March 15, 1939, and shall also include this stipulation and the order entered herein.

It Is Further Agreed and Stipulated by and between the parties hereto that the Court may enter any proper order on this stipulation.

Arthur R. Seelig,
Attorney for Plaintiffs (Appellants).
David A. Riskind & Abraham W. Brussel,
Attorney for Defendants (Appellees).

438 And afterwards, to wit, on the 7th day of March, 1939, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

439 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—16073) * *

ORDER.

On stipulation between the parties hereto, said stipulations being filed herewith.

It Is Hereby Ordered, Adjudged And Decreed that for the purpose of making up the transcript of record for use

on appeal, the Clerk of this Court may and shall include in such transcript the condensed statement of the evidence as filed by appellants hereto on January 19, 1939, with the express understanding that both of the parties hereto may at any time subsequently add to said condensed statement of testimony or modify said statement of testimony by filing any excerpts from the original transcript of the proceedings had before the Master either in question and answer form or in such form as each and both of the parties believe to be advisable, if for any reason it is necessary or advisable in the opinion of each or both of the parties to have such additional presentation before the Circuit Court of Appeals for the purposes of properly presenting and arguing the cause before said court.

It Is Further Ordered, Adjudged And Decreed that
440 the Clerk of this Court in making up the transcript of record for use on appeal to the United States Circuit Court of Appeals for the 7th Circuit, may and shall include the originals of all exhibits referred to in the designation of records previously filed herein, both by plaintiffs (appellants) and defendants (appellees) in lieu of copies of said exhibits, said exhibits so referred to being plaintiffs' exhibits 1, 2, 5 and 7 and defendants' exhibits 3, 5, 6, 7, 8, 9 and 10.

It Is Further Ordered, Adjudged And Decreed that the Clerk in making up the transcript of record for appeal shall include therein order of Judge Sullivan of February 23, 1939, extending time within which appellants may file their transcript of record on appeal up to and including March 15, 1939, and shall also include the stipulations filed herewith and this order entered herein.

Enter:

Barnes,
Judge.

Dated: March 7th, 1939.
Order O. K.
David A. Riskind &
Abraham W. Brussell,
Attys. for Defendants.
Arthur R. Seelig,
Atty. for Plaintiffs.

441 And on, to wit, the 23rd day of February, 1939, came the Parties by their attorneys and filed in the Clerk's office of said Court their certain Stipulation, in words and figures following, to wit:

442 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—16073) * *

STIPULATION.

It Is Hereby Stipulated by and between the parties hereto by their respective Counsel that the time within which the Plaintiffs (Appellants) may file their transcript of record on appeal in the Circuit Court of Appeals of the United States for the Seventh Circuit be extended to and including March 15th, 1939.

Arthur R. Seelig,
Attorneys for Plaintiffs (Appellants).
David H. Riskind & Abraham Brussell,
Attorneys for Defendants (Appellees).

443 Northern District of Illinois, } ss.
Eastern Division. }

I, Hoyt King, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with the Designations filed in this Court in the cause entitled Lake Valley Farm Products, Inc., a corporation, *vs.* Milk Wagon Drivers' Union, Local 753, et al., Equity No. 16073, as the same appear from the original records and files thereof, now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 10th day of March, A. D. 1939.

Hoyt King,
Clerk.

(Seal)

IN THE UNITED STATES CIRCUIT COURT OF APPEALS. Filed Mar. 16, 1939.

For the Seventh Circuit.

Lake Valley Farm Products, Inc., a corporation; Lake View Cooperative of Watertown, Wisconsin, an Agricultural Cooperative Corporation of the State of Wisconsin; Amalgamated Dairy Workers Local, Industrial Union No. 819,

Plaintiffs (Appellants),

vs.

Milk Wagon Drivers' Union, Local 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, a voluntary association; Robert C. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, Alvin F. Richards, and Joseph L. Patterson,

Defendants (Appellees).

No. 6900.

STIPULATION WITH RESPECT TO OMISSION OF CERTAIN PORTIONS FROM PRINTED RECORD.

It is hereby stipulated by and between the parties, by their respective counsel that for the purpose of avoiding needless repetition and the incurring of needless expense to the parties hereto, that the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, in causing the record of the above entitled cause to be printed, is hereby requested and authorized to omit from the said printed record the following portions of the original transcript of record:

1. Omit commencing with Paragraph 10, on Page 129 to Article VII on line 2, on Page 132.

2. Omit commencing with "Rule 3,—Vacancies" on Page 137, up to "Part G—Membership Meeting" on Page 139.

3. Omit all of Defendants' Exhibit 5, commencing on Page 184, except both sides of Pages 184, 185 and 186 and the first paragraph on Page 187 thereof.

4. Omit entire Pages 140 and 141.

5. Omit all of Defendants' Exhibit 7, commencing on Page 230, except only the heading and first paragraph appearing on Page 230; Section 41, appearing on Page 230; Section 42 appearing on Page 231; sub-paragraphs K and L appearing on Page 232; sub-paragraph N, appearing on the reverse side of Page 232.

6. Omit all of Defendants' exhibit 9, excepting only the title (including the name of Court, number of case, names of parties); Paragraphs 5 and 6, on Pages 244 and 245; Paragraph 8 on Page 246 to the end of the first Paragraph on Page 247; Paragraph 11, on Page 249; Paragraph 15 on Pages 253 and 254; Paragraph 16, on Page 254 to the end of the first paragraph on Page 255; Paragraph 18, on Page 257 to the end of Paragraph 18, on Page 258; Paragraph 20, on Page 260 to the top of Page 261; Paragraph 21, on Page 261, to the end of the first paragraph on Page 262; Paragraph 22 on Pages 262 and 263; Paragraphs 24, 25 and 26, commencing with Page 263 and ending at the middle of Page 265; prayers for relief on Pages 267 and 268.

7. Omit entire Page 277 (Certificate).

8. Omit from Plaintiffs' Exceptions, commencing with Paragraph J, Page 283, to and including Paragraph T, Page 294; commencing with Paragraph B, Page 295, to and including Paragraph D, Page 298; entire exception 8, on Pages 300 and 301.

Arthur R. Seelig,
Attorney for Appellants.

David A. Riskind & Abraham W. Brussell,
Attorneys for Appellees.

Endorsed: In the United States Circuit Court of Appears * * (Caption—6900) * * Stipulation With Respect to Omission of Certain Portions from Printed Record. Filed Mar 16 1939 Frederick G. Campbell, Clerk.

IN THE

United States Circuit Court of Appeals
For the Seventh Circuit

No. 6900

LAKE VALLEY FARM PRODUCTS, INC., A CORPORATION; LAKE VIEW COOPERATIVE OF WATERTOWN, WISCONSIN, ETC., ET AL.,

Plaintiffs-Appellants,

vs.

MILK WAGON DRIVERS' UNION, LOCAL 753, ET AL.,

Defendants-Appellees.

Counsel for Plaintiffs-Appellants:
MR. ARTHUR R. SEELIG.

Counsel for Defendants-Appellees:
MR. DAVID A. RISKIND,
MR. ABRAHAM W. BRUSSELL.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

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1 HARRY ENTIN:

Direct Examination by Mr. Seelig.

Mr. Seelig: Q. Did you observe the pickets when they were in front of your store?

A. I did.

Q. Did you see the pickets talk to anyone?

A. Very little. • • •

Mr. Seelig: Q. Will you answer that, Mr. Entin?

A. The violence? My windows were broken three times on different occasions.

Q. On what dates did that happen?

A. It happened once four years ago, and then about four months later, and two years ago last July. • • •

Mr. Seelig: Q. Will you explain the circumstances of the removal of that sign, please?

A. I ordered milk from a different dairy, and they said I should take the sign out before they will carry in the other milk and take out—

Mr. Riskind: I ask that that be stricken, if the Master please.

The Master: He has not finished his answer. • • •

Cross-Examination by Mr. Riskind.

Q. When did you first secure that sign bearing the Amalgamated Union label on it?

A. Between fifteen and twenty days from now.

Q. And will you tell the Court just how you managed to get that sign, and from whom?

A. The Wagner driver brought it in and gave it to us.

Q. Well, now, just tell us the conversation that you had with that Wagner driver when he brought that sign in.

A. The only conversation I had is to put that in the window and show the people that it was union milk by a different union delivered.

2 Q. Is that the only conversation you say you had with him?

A. Yes, sir. • • •

MAE SITKO:

Direct Examination by Mr. Seelig.

Mr. Seelig: Q. Now, will you state what, if anything, occurred on May 3, 1938?

A. Why, two men came in the store; in fact, they were out there just before I opened, and came in and said they represented the Milk Wagon Drivers Union, and they wanted me to put in union milk or they would picket me. I said they should go next door, there was a Meadowmoor Store there, and they were welling milk cheaper than I was, and they said he would take care of himself, and they said, "Well, if you don't intend to do it, we will picket you, and we are going to ruin you."

Q. Was anything else said at that time?

A. Well, he made a few slight remarks. He said, "You will either put in union milk, or we are going to ruin your business." That is the way he put it. * * *

A. To begin with, they are walking in front of our windows and he has at the bottom of this sign two little pieces of wood and it is only about eighteen feet wide, and when he gets to the end of each window—it is only fifteen feet wide, bang, that little piece of wood goes into the window and makes a track on the window, and marches back again, and I went out there one day and said, "Now, listen, Mister, you stay back away from the window, or I will take a broom to you". Of course, he didn't listen to me, but I may have been aggravated, too, and was— * * *

Q. Do you display a sign indicating that your milk comes from a union dairy?

A. I have that C. I. O. sign, and I took it out this morning.

Q. But you had been displaying it?

A. Yes, sir, I had it right on the window.

Q. And it could be clearly seen by anyone walking on the widewalk?

A. Yes, sir.

Q. And will you state the circumstances of your removing that sign this morning?

A. Well, we washed the windows, and the windows are not decorated yet, to go up, and I had to leave it there.

Mr. Seelig: I will withdraw that question.

Mr. Riskind: No, I think it ought to go in.

The Witness: That sign is going right back up again.

* * *

Recross Examination by Mr. Riskind.

Q. What time do you open your store?
A. Well, I used to open it around seven o'clock, but since the pickets are there, we do not open before eight.
* * *

MAUDE CADDLE:

Direct Examination by Mr. Seelig.

Mr. Seelig: Q. Will you continue on, and say what was said and done, please?
A. I had a card in the window from—I think it said the Amalgamated Union. I just do not remember exactly about that, and he came in and took out that card and he asked me to give it to him, and I told him I could not possibly do so. That is the card right there.
(Indicating.) That is the card there.
Mr. Seelig: For the purpose of the record, will you identify this as plaintiff's exhibit number 1?
The Witness: A. So, he went out and came back in, and he said, "I do not mean to offend you, but I will pay you something for that card, if you will let me have it. I would like to take it to our president". Well, I said
"Why, I would not let you have it, no matter what
4 you gave me. That is my own protection to have it in my window".
Q. Was there anything said further at that time?
A. No, sir.
Mr. Carmell: I move to strike that out as being immaterial, no connection.
Mr. Seelig: I think it has a very important connection.
The Master: How do you know it was a representative of the Bowman Dairy?
A. Because he told me so, and he wanted to sell me milk, and have me take the milk over instead of the one we were using.
Mr. Seelig: That is all. * * *

JOSEPH L. BAZIK:

Direct Examination by Mr. Seelig.

Q. And you sell dairy goods, do you not?
A. That is right.
Q. Of what dairy?
A. Lake View Dairy.
Q. You refer to the Lake Valley Farm Products, being one of the plaintiffs in this case?
Mr. Riskind: I object to that, and move it be stricken.
The Master: It is leading in form.
Mr. Riskind: May I have that stricken?
The Master: I will sustain the objection.
Mr. Seelig: Q. Well, when you say "Lake View" what do you mean by that? What is the more precise name, do you know, of that company?
A. Well, their cap reads "Lake Valley", but I always called them "Lake View". I don't know, I just— * * *
Q. All right.
A. Well, for one week, I had both of them in there, that is Bowman and Lake View, and one morning, a couple of men walked in. They claimed they were from the Milk Wagon Drivers' Union, and they told me that unless I discontinued the Lake View Milk, that they would be forced to picket my store.

* * * * *

Q. You know who Mr. O'Connor is?
A. No, I don't know Mr. O'Connor.
Q. Do you know the position he has with the Milk Drivers' Union?
A. I believe he stated that he was the business agent. He came out and we talked it over and I told him that the business—the business at my particular store and in my particular locality was such that I had to have cut rate milk in order to keep my doors open. I was willing to keep a union dairy, Bowman or anybody he could name, but I would have to have cut rate milk along with it. We talked on for about a half an hour or better and finally he left and said, "Well, do what you think is best" and so I called the Bowman Dairy Company on that same day and told them they should come and leave milk in the morning, for Saturday morning, and they didn't leave it and I called them again at noon, and the men came out from the dairy—

Mr. Carmell: Just a moment. I object to any conversation with the dairy.

The Master: Yes, unless it was in the presence of the pickets or somebody there.

The Witness: A. Well, Mr. O'Cononr called off the pickets Friday afternoon, he called them off and that was all I heard from them, and I called the dairy and they wouldn't deliver, and I didn't pay any attention to it at all, and Sunday night my windows were smashed.

* * * * * *

Q. During the time that you had these pickets in front of your store what, if any, effect did they have on the amount of milk sold?

Mr. Riskind: The same objection.

The Witness: A. It didn't have any effect on it.

6 Mr. Riskind: Oh, all right.

The Witness: A. I didn't sell any more and I didn't sell any less.

* * * * *

CARLA FISCHER:

Direct Examination by Mr. Seelig.

Q. And from whom do you purchase the milk and dairy products that you sell in that store?

A. Up to about a week ago I purchased from the Lakeview.

Mr. Riskind: Just one second. May I ask that that be stricken—the Lakeview is not the Lake Valley as far as we know.

Mr. Seelig: Off the record—

Mr. Riskind: Just one second. As far as the complainant is concerned, we have been told it was the Lake Valley, there has been no mention in this complaint as to the Lakeview, and any mention of the Lakeview Dairy is immaterial in this case and I think it should be stricken from this record.

The Master: I think the other witness testified that it was also known—

Mr. Seelig: This dairy succeeded the Lakeview and they still operate under both names.

Mr. Riskind: They are not made a party plaintiff in this case, Lakeview, and I move it be stricken.

Mr. Seelig: They are not actually the plaintiff. They

are not actually a party to this proceeding excepting they have succeeded to the other dairy and still use some of the milk bottles of the Lakeview. These people have gotten in the habit of referring to them as the Lakeview. I myself make that error sometimes. We will have competent testimony later on as to that.

* * * * *

Mr. Seelig: Q. What if anything happened at that
7 time in connection with your changing from the Lake Valley Dairy to any other Dairy?

A. Well, we had our windows broken in one night.

Q. What if anything else happened?

Mr. Riskind: Now, for the purpose of this record, where they state that windows were broken, usually in these conspiracy cases we try to shorten them up by asking that a blanket objection be made to this type of evidence and say it be understood now we don't—any time a window was broken we are making a blanket objection on the ground there is no connection between any of the parties.

The Master: All right, it may be understood.

* * * * *

Q. Do you desire to continue to purchase milk from the Lake Valley Dairy?

A. I would have.

Q. At present you are buying milk from what dairy?

A. Turner.

Q. During the time you were selling milk of the Lake Valley Dairy you were selling milk at cut-rate prices, were you not?

A. Correct.

Q. And at what prices are you selling milk at this time?

A. The same price, eight and a half cents.

* * * * *

Cross-Examination by Mr. Riskind.

Q. What do you sell your milk for at the present time?

A. Eight and a half cents.

Q. The Turner Dairy's?

A. Yes, sir.

Q. That is a Union dairy, isn't it?

A. Yes, sir.

Mr. Seelig: I object to that.

Mr. Riskind: Q. Do you know if it is a union dairy belonging to 753?

8 A. That is why I took it.

Q. And what time do you open your store for business?

A. Six-thirty in the morning.

Q. And at the time the Wagner's dairy man delivered your milk, what time did you open it?

A. The same time.

Q. The same time, six-thirty. And when do you get your milk supplies from the Turner dairy?

A. Well, I get it at various times, sometimes he comes at nine-thirty and ten and today he was there late and came eleven-thirty.

Q. What time did the Wagner dairy man deliver your milk? I mean Lakeview. When I say "Wagner" I mean Lakeview. What time did the Lakeview man deliver your milk?

A. He used to come always at eight.

Q. Eight o'clock in the morning? Never before eight?

A. It probably was before but very seldom after.

Q. Then he did come sometimes before that time?

A. Yes, sir.

* * * * * *

Q. Oh, I see. Now, at the time you took dairy supplies from the Lake Valley Company, did you or did you not know whether that man belonged to any union labor organization?

A. I did know he did not.

Q. That he did not belong to it. Did that make any difference to you?

A. At the time it didn't. I didn't think it was important.

Q. When you received the sign, this placard, from whom did you receive it, the yellow sign?

A. I received it from my driver.

Q. That was the driver deliverying the dairy supplies from the Lake Valley Dairy Company, is that correct?

A. Yes.

Q. Did you have a conversation with him at that time?

9 A. Well, all he said was—

Q. Yes or no, did you talk to him?

A. Yes, sir.

Q. What did he say to you and what did you say to him?

A. All he said was they belong to a union now and we should put the sign in our window so people could see it.

Q. Did you have any pickets in front of your store at any time?

A. No.

* * * * * *

JOSEPH SPRY:

Direct Examination by Mr. Seelig.

Q. Are there any other milk stores competing with your business in that block?

A. There is a meadowmoor at 51—

Q. And they take quite a bit of your business away, do they?

Mr. Seelig: I object to that.

Mr. Riskind: Q. Do you or don't you know whether they take business away from you?

A. I don't know that.

Q. You don't know that?

A. No, sir.

* * * * * *

Q. I noticed you called the dairy the Lakeview at first and then the Lake Valley. Now, who told you the name was changed from Lakeview to Lake Valley Dairy?

A. The bottle is marked Lakeview, but the case is marked Lake Valley.

* * * * * *

Q. From whom did you get it?

A. The milk driver.

Q. From whom?

A. Frank—

Q. He is a Lake Valley Driver?

A. Yes, sir.

Q. When was that?

A. That was about a week ago, I got that card.

Q. Did you have a conversation with him about the Card?

A. He just said, "Put that in the window. We belong to the Union now."

Q. Did he tell you which union he belonged to?

A. Well, you can see by that.

Q. Did he tell you or didn't he?

A. No, sir.

Q. Did you ask him any questions about it? Did you ask him why the union had been formed?

A. No, sir.
Q. Did you ask him any questions about it? Did you as him why the union had been formed?
A. No, sir.
Q. You didn't care anything about it?
A. I didn't.
Q. You didn't pay any attention to it?
A. No, sir.

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JOSEPH P. MOORHATCH:

Direct Examination by Mr. Seelig.

Q. Yes, the night you referred to a moment ago when you said pickets were there one morning until the next night?
Mr. Carmell: No, he said they were there until the next morning.
Mr. Seelig: Next morning. Pardon me, I thought you said the next night.
The Witness: A. Well, I thought it best to carry on and keep my doors open and sell union milk.
Mr. Seelig: Q. Did any persons at any time visit you concerning the type of milk you were selling?
A. Yes.
Q. Will you state the date of that visit and who the parties were and what took place at that time?
11 A. I was actively negotiating with Bowman's and other concerns because it was just recently that I reorganized my business so these people were seeing me at the time and Western-United had been there before and so they would drop in on me now and then, naturally, trying to get the business.
Q. At any time did any representative of the Western-United Dairy talk to you concerning the removal of goods from the Wagner Dairy?
Mr. Riskind: Objection to Counsel's leading the witness, if the Court please.
The Master: He may answer.
Mr. Carmell: And in any event, any acts by the Western-United wouldn't be binding upon the defendants.
Mr. Seelig: It is a member union—if it is a member of the union I thing it would.
Mr. Riskind: The Western-United Dairy is not.
The Master: He may answer.

The Witness: A. Yes. Yes, they had been trying to get that stop continuously.

Mr. Seelig: Q. What, if anything, took place concerning the Western-United drivers and yourself in connection with your discontinuing buying from Wagner and taking from Western-United at that time, that morning?

A. Well, it was decided and the milk was exchanged and I kept on—I got my supplies later and continued business as usual and I am still—

* * * * * *

Mr. Seelig: Q. What amount did they pay you?

A. Fifteen dollars.

Q. Did any conversation take place between yourself and those drivers that gave you that money at the time they gave it to you?

A. The conversation was to—well, it was for business losses, and it was for the stop, and I tried my uttermost to actively negotiate with Mr. Wagner, but—I don't care
12 to answer any more questions.

* * * * * *

Mr. Seelig: Q. At this time you do not desire to purchase milk from the Wagner Dairy, do you?

Mr. Carmell: I object to that question.

The Master: He may answer yes or no.

Mr. Seelig: Q. Answer that question yes or no, Mr. Witness, if you can.

A. Well, naturally I would, because it helps business.

Q. Then why do you not purchase milk from the Wagner Dairy Company at this time, if you desire to?

A. I am under obligations. I have made an oral statement, and I don't feel justified in backing out.

Q. The statement you refer to is the statement made to the Western United drivers?

A. Yes, and the compensation received.

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GENEVIEVE ST. PIERRE:

Direct Examination by Mr. Seelig.

Q. What, if anything, has happened recently concerning the sale of milk in your store?

A. Well, I don't know.

Q. Has anyone visited your store recently concerning the sale of milk by the store?

A. No, that was just one driver that come in and says they are going to picket the store, and he told me to change milk—

Q. And do you know the Driver's name?

A. No, I couldn't tell you the driver's name.

Q. And what did he say to you?

A. He just told me that I should change milk men, because our milk men aren't in the union.

Q. And what else did he say?

A. He said they are just going to picket the store if I didn't change, so I told him he couldn't talk to me about that, and he went.

13 Q. Did that man make any reference to this sign that you display in your window?

A. No. Oh, yes, he just told me to take that sign out, he says, because they are not in the union.

Q. Was any reference made to the price at which you were selling milk?

A. No.

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MARGARET BALIKA:

Direct Examination by Mr. Seelig.

The Witness: A. Well, two men came in the store and asked me to take the sign off, and I should sell the milk just like they do, at eleven and a half—ten and a half cents. So I did take the sign off, because I didn't want anything should happen, but—

Mr. Riskind: We cannot allow that in the record.

Mr. Seelig: Q. Did they say anything further to you?

Mr. Riskind: Just one second. I am making an objection.

The Master: She took the sign off. All after that goes out.

Mr. Seelig: Q. Did they say anything further to you, Mrs. Balika?

A. Not anything very much, but they told me if I don't do as they ask, they are going to have a picket in front of the store, but so far, they didn't have.

Q. And you removed the signs, is that right?

A. The signs, I did.

Mr. Riskind: But not this card?

Mr. Seelig: Q. You are still displaying this card?

A. Yes, sir.

Mr. Seelig: That is all.

Cross Examination by Mr. Riskind.

Q. Who gave you that sign, Mrs. Balika? The yellow sign.

14 A. Mr. Kozel.

Q. Is that the milkman?

A. Yes, sir.

Q. What dairy did you take from?

A. The Lakeview.

* * * * * *

Q. And the man that gave it to you was a milk driver, isn't that so?

A. Yes.

Q. Did you talk to that man when he gave you that sign?

A. Yes.

Q. And what did you say to him and what did he say to you? Did he tell you why he gave you that sign?

A. Well, he told me about that sign, and then he gave me the sign, I should put that on my window.

Q. Did he tell you why you should put that on the window?

A. He told me that was a union sign.

Q. Didn't he tell you at that time that the only reason you should put that sign on the window was that they wanted to put the Milk Wagon Drivers Union out of business?

A. Yes.

Mr. Riskind: That is all.

Re-Direct Examination by Mr. Seelig.

Q. In addition to telling you that, did he tell you anything further that he wanted you to do?

A. No.

Q. And you are certain that he said exactly what this attorney asked you, is that correct?

Mr. Carmell: We object to that. This is cross examining his own witness.

Mr. Seelig: All right.

Mr. Riskind: That is all.

15 SIGFRIED WEISS:

Direct Examination by Mr. Seelig.

Q. Just a moment please. I think it would be a little easier for the Master if you turned your chair so you would be about this way.

A. All right. They have their own trucks. They buy the milk at wholesale at our plant, pay cash for it, and then they go out and distribute to the stores. The stores usually take at the average of eight to ten cases. We have also about twenty-five men that have retail where they take out milk and deliver from door step to door step.

Q. And all of these men that you have referred to as vendors, they own their own delivery equipment, do they not?

A. They do.

Q. You do not pay them a salary, do you?

A. No, sir.

Q. They are not on your pay roll?

A. No, sir.

Q. You do not consider them employees, do you?

A. No, sir.

Q. You have no control over them, have you?

A. No, sir.

Q. As to the manner of distribution?

A. No, sir.

Q. At what time of the day do these vendors pick up the milk from your dairy?

A. From five to eight o'clock.

Q. In the morning?

A. In the morning.

Q. And—

A. I should say four-thirty to seven-thirty.

Q. And do these vendors return then later in the day?

A. They return from eleven to two o'clock.

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Q. Approximately how many cases of milk does a wholesale vendor of your dairy distribute each day?

16 A. They distribute from seventy-five to a hundred and fifty cases.

Q. And how many hours are required in distributing that number of cases?

Mr. Riskind: Seventy-five to a hundred?

The Witness: A. Three and a half to five hours.

Mr. Riskind: Seventy-five to a hundred cases?
The Witness: A hundred and fifty.

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Q. But their route is actually distributed each day, is it not?
A. It is seven days distributed.
Q. How do they distribute on the seventh day?
A. They have their own helpers and they have the helper make the route one or two days a week.
Q. Do any vendors work less than six days a week?
A. Surely. Some of them work three or four days when the helper makes the whole route.
Q. And these helpers, in most instances, are what types of persons?
A. They are young fellows—
Mr. Riskind: I do not think he ought to testify to that. Objection to that question, if the Master please.
Mr. Seelig: I withdraw it.
Q. Will you explain to the Court the manner in which the helpers distribute on these routes?
A. They are young men. They are just out of school—but we will say eighteen, nineteen years.
Q. What compensation do these helpers get?
A. They are glad to get three or four dollars a day.
Mr. Riskind: Q. They are glad to get three or four dollars a day?
A. Yes.
Mr. Seelig: Q. And what amount do they actually receive?
A. We do not know.

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Mr. Seelig: Q. In your opinion, what amount is so sold through cut rate stores?
17 A. Forty percent.
Mr. Riskind: Forty percent of the milk in Chicago sold through cut rate stores?
A. Forty percent, yes.

* * * * * * *

Q. So that the generally prevailing price of cut rate milk in the City of Chicago is what price for one quart?
A. It is nine and a half cents, cut rates, the average.
Q. So that one quart would actually cost ten cents?
Q. Your dairy does not own any of these stores, do they?
A. No, sir.
Q. You are not interested in any of these stores in any way, are you?

A. No, sir.
Q. Except in that they distribute your products?
A. That is correct.

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The Witness: A. It is five years we observed these things in these five years. It is a continuous trouble for all these milk stores and our dairy.

Mr. Seelig: Q. What has been the experience of your dairy during that time, during the past five years?
A. The Lake Valley Dairy, we was bombed twice.
Q. What were the dates of those bombings?
A. We was bombed in June 1935, and also September, 1935. Lake View Dairy, that is part of our dairy, was bombed in 1934.

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Mr. Seelig: Q. Continue as to any other statements you may have to make concerning your plant?
A. Our trucks were dumped in the river. They were burned.
Q. When did this occur?
A. This occurred in 1934. Our drivers were kidnapped, taken out to Lincoln Park, trucks taken away from them. He had to walk home.

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18 Q. Have you observed any of these occurrences to other independent dairies, cut rate dairies?
A. Yes.
Q. What have you observed during that period?
A. Edgewater Dairy was bombed.
Q. And when did that occur?
A. It occurred also in 1934.
Mr. Riskind: Now, I think this man is going far afield.

• • • • • •

Q. And are any of your stores being picketed—or any of your stores been picketed during the past thirty days?
A. Yes, sir.
Q. Approximately, if you know, what number of stores have been picketed during the past thirty days?
A. There are quite a number.
Q. In what manner have these stores been picketed with reference now to the length of time they have been picketed, or the like?
A. Some of them are picketed—

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Q. Have you observed this picketing at any specific locations?

A. Yes, I have.

Q. Have you observed the effect of this picketing as to the quantity of milk that is sold—

Mr. Riskind: I object, if the Master please.

Mr. Seelig: Let me finish my question.

Q. —that is sold at the store that is being picketed?

Mr. Riskind: Two reasons. Too general.

Mr. Seelig: I think it is extremely competent.

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Mr. Seelig: Q. Do you know the name of the owner of that store?

A. He has a very hard name to say.

Q. A long Polish name?

A. Yes.

Q. You could determine that party's name, couldn't you?

A. I think so.

19 Q. Have you observed, and do you know the effect of picketing on any other one of your stores?

A. Generally all the same, that they lose business.

* * * * * * *

Q. The members of the Milk Wagon Drivers' Union, Local 753, are employed by whom?

A. They are employed by the so-called—up to now, they was always called union dairies.

Q. Could you name some of those dairies?

A. Bowman, Borden, Wanzer, Western-United.

Q. Now—

Mr. Riskind: Let him go ahead. There are about a hundred and fifteen of them. Don't name five large ones now. Do not try to cut him off.

Mr. Seelig: Q. Some of these diaries are very large and some are smaller dairies?

A. Right.

Q. And the dairies that employ members of the Milk Wagon Drivers' Union, Local 753, distribute a smaller or a larger portion of the milk in the City of Chicago?

A. They have the larger portion of it.

Q. Aside from the milk that is distributed by the so-called cut rate dairies, many of which you have mentioned; I mean, milk in the City of Chicago, practically all is distributed through these dairies that you have just referred to, is that correct?

A. Yes.

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Mr. Seelig: I will stipulate for the record that there are more than five diaries employing your men.

Mr. Riskind: There are about a hundred and fifteen dairies employing them.

Mr. Seelig: I do not know the exact amount. I do not care to stipulate to something I am not absolutely familiar with.

Mr. Riskind: All right.

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20 THOMAS J. DARCEY:

Direct Examination by Mr. Seelig.

Q. Approximately what amount of milk in pounds do you ship into the Chicago market daily?

A. It varies.

Q. What is the minimum amount?

A. It runs from some—as orders come in from these dairies. It may run over from the other day, but whatever the dairies order. Some days we ship as high as sixty to seventy thousand. If on another day some thing happens—

Mr. Riskind: Sixty to seventy thousand pounds in a day?

Mr. Seelig: In a day.

The Witness: And another day we may run down to twenty-five or thirty. It all depends on your call for milk.

Mr. Seelig: Q. Mr. Darcey, do you ship to any other dairies besides the Lake Valley Dairy?

A. We have a regular tank that comes to the Lawndale every day.

Q. Do you, at any time, sell to other dairies?

A. We sell to other dairies. The Ogden. The Farmers' Dairy. We have sold Wagner and quite a few of the other dairies in the city.

Q. And you ship regularly to the Lake Valley Dairy, that is one of the plaintiffs in this case?

A. The Lake Valley, yes.

Q. Is that correct?

A. Yes, that is correct.

Q. And is the milk that is shipped to the Lake Val-

ley Dairy distinguished in any way from the milk that you might sell to any other dairy?

A. No.

Q. Does the plant at Watertown separate any milk into cream?

A. We separate the surplus milk. Some times of the year there is no surplus. Other times, when what you call the flush is on, we separate it and ship it.

Q. Has your Watertown plant separated any milk during the Last year?

A. Yes, we have separated milk.

Q. And have you shipped any cream from that separated milk to the Lake Valley Dairy?

21 A. Oh, yes, we ship that to the Lake Valley Dairy.

Q. And that cream is separated from milk that is received from these same farmers that you have talked of before?

A. The same farmers.

Q. And the milk, when it is received, is physically undistinguishable from the milk that goes into fluid milk, is that correct?

A. Received for cream purposes?

Q. Yes?

A. It is one and the same article.

Q. Your dairy plant at Watertown, Wisconsin, ships every day into the Chicago market, does it not?

A. Every day.

* * * * * *

Q. What proportion of your milk, for fluid milk purposes have been sent to the Lake Valley Farm Products during the past several months?

A. Approximately half of the supply, over half of the supply.

Mr. Riskind: That is the last few months?

The Witness: That is the last few months.

Mr. Seelig: Q. Of the remaining half, does part of that go to Chicago, to dairies selling cut rate milk?

A. To the Lawndale, which I understand is a cut rate dairy.

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JOHN E. IGOE:

Direct Examination by Mr. Seelig.

Q. What is approximately, or what is your average net income, after deduction of all expenses from the conduct of your route?

A. Approximately sixty dollars a week.

Q. How many days each week do you work, Mr. Igoe?

A. Some times four, five, six.

Q. Do you have any assistance on that route?

A. Yes, I have a helper.

Q. And does that helper work on the same days you work?

A. No, he gets off two days a week, or a day a week.

22 Q. What is the name of your helper?

A. I can't remember his last name. I know it is a Polish name.

* * * * * * *

Q. I asked you to state the nature of your union with particular reference as to the type of people that are applicable for membership in the union?

A. Well, we take in all the dairy workers, including the inside help, the office work, the drivers, the sweeper, the janitor, and all of those dairy workers that are not organized; we take them all in.

Q. And you are organized, then, along lines known as industrial lines, is that correct?

A. That is correct.

Q. Rather than along lines known as craft lines?

A. That is correct.

Q. You do not only take into your union, milk wagon drivers, do you?

A. No, we take in everybody connected with the milk industry.

Q. Do you know of your own knowledge whether or not the workers and vendors distributing the milk of the Lake Valley Dairy and the Wagner Dairy products are members of your union?

A. Yes, I do.

Q. Are they members?

A. They are.

Q. Have you in your union, as members, persons dis-

tributing milk of any other dairies in the City of Chicago?

A. Yes, we have members of the Edgewater Dairy.

Q. When was the plaintiff union organized?

A. Approximately two months ago; I should say the last part of March, it started.

Q. Who were the original members of your union, or who organized the union?

A. Well, there was myself and Mr. Kost and Mr. Zalewski, and my brother, Mr. Joe Igoe.

Q. Approximately how many members has your union at this time?

A. I should say about one hundred thirty members. There is new ones coming in every day.

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Mr. Seelig: Q. What, if anything has been done or is being done concerning the matters of wages, hours, terms, and conditions of employment?

23 A. Well, we propose to get up certain agreements and then if they don't pass, we propose to go before arbitration.

Q. Mr. Igoe, what are the purposes of your union?

A. Well, they are to better the conditions of the working people; that is, the drivers and the inside workers of these different dairies that we are organizing.

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Mr. Seelig: Q. What is the average earnings at this time of the vendors distributing milk of the Lake Valley Dairy?

Mr. Riskind: I object to that. I think the books and records of the concern would be the best evidence.

Mr. Seelig: The books and records would not show that, because they are independent contractors.

The Master: He may answer.

The Witness: A. I should say $50.00 a week.

Mr. Seelig: Q. Are you referring to retail or wholesale?

A. Referring to wholesale.

Mr. Riskind: How much did you say?

The Witness: Approximately $50.00 a week or better.

Mr. Seelig: Q. And what is the average earning of helpers on any of these wholesale vendors' routes?

A. That I do not know.

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Q. Do you know how many days a week the vendors at these two dairies work?

A. Well, some of them work six days, some work five days. It all depends.

Q. Do any work more than six days?

A. No.

Q. And on the seventh day of each week who distributes the milk on these wholesale vendors' routes?

A. In the dairy where I work they have an extra man who takes routes on their odd day.

Q. And all this extra man does it takes routes on the seventh day?

A. He takes out a relief route, yes.

Q. You have observed vendors at your dairies and other dairies as to the time they take out their load in the morning and the time they return with the empty truck, have you?

Mr. Riskind: May I interrupt? I want to clarify it so we won't have to call him back. The seventh man, is he a vendor also, the man who takes the extra day? Is he a vendor?

Mr. Seelig: Q. Will you state the nature of the employment or business of the seventh man you just referred to?

A. Well, like in our dairy, they have several house trucks, what they call.

Q. Yes?

A. That they have drivers working for the dairy.

Mr. Riskind: All right.

The Witness: And they have a man relieving those routes, and he relieves our routes at the same time.

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JESSE ELMER WILSON:

Cross-Examination by Mr. Riskind.

Q. What is your name again? What is your full name?

A. Jesse Elmer Wilson.

Q. You have seen me before, haven't you, Mr. Wilson?

A. I have, yes, sir.

Q. You saw me in the courtroom of Judge Oscar Caplan, did you not?

A. Yes, sir.

Q. Where you have filed a complaint against these two men, isn't that right. Segal and Wald?

A. Yes, sir.

Q. Isn't it a fact that at the time you told the judge a story entirely different from the one you tell me about now?

A. I told the same story.

Q. Is it a fact that the police—

A. As far as it went—

Q. As far as it went?

A. As far as it went, excepting the last part of it that happened since that.

Q. Insofar as the violence that occurred that day in your store. Now, Mr. Wilson, isn't it a fact that we also called at that time the policeman to whom you had told your story at that time?

A. I don't remember.

Q. Weren't those two policemen in court that day?

A. I do not remember.

Q. Did you see any one of the policemen to whom you had told your story on that day?

A. I don't know that—

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A. And they said the lawyers—they said the big lawyers of the milk wagon Drivers' Union was too big and so the police would not make that warrant out.

Q. Who said that?

A. That was the desk sergeant.

Q. What was his name?

A. I don't know his name, but it was the desk sergeant.

Q. You are sure you don't know the desk sergeant's name?

A. No.

Q. Isn't it a fact that he appeared in court the day you appeared in court?

A. I don't remember whether he did.

Q. And isn't it a fact that Judge Caplan called you a prevaricator from the bench and said you had been lying?

A. I don't remember.

Q. You do not remember him saying anything like that?

A. I don't remember.

Q. Isn't it a fact that you said at that time that one of the men had used a gun?

A. One of the men had a gun in his pocket and he did.

Q. Did have a gun, and isn't it a fact you told the sergeant he did not have that gun?

A. No, I did not tell the sergeant any such thing, no, sir.

Q. But you don't remember anything like that?

A. No, sir.

* * * * * *

Q. Did he tell you that the purpose was to destroy the milk wagon drivers' union, local number 753?

A. He did not.

Q. Did he say anything about the purpose of this sign?

A. He did not.

26 Q. Did he tell you where he wanted it put?

A. He said I could put it in my store window.

Q. Did he tell you what purpose it was for?

A. No, sir, he didn't say that either. He said they belonged to the union now and to put a union card in the window.

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SIGFRIED WEISS:

Cross-Examination by Mr. Riskind.

Q. Have you any extra men that take the place of the vendors on the seventh day?

A. No, not now.

Q. No extra men at all?

A. Not now, we used to have.

Q. Answer my question. Have you had drivers employed by you?

A. It was about a year and a half back.

Q. A year and a half—since that time you have had no drivers of any kind?

A. No, sir.

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The Master: Are you unionized? I thought you testified you were.

A. They are unionized, yes, sir, but at the present time there is no wage scale made out. We had 60 days where they worked this price situation out.

Mr. Riskind: Q. You have no wage scale for the men employed at your dairy at the present time?

A. We have—

Q. At the present time you have no wage scale, have you?

A. No, we have no wage scale; we have our own wage scale.

Q. You have your own wage scale?

A. Yes, sir.

Q. What is your wage scale?

A. It is—the average is about $33 to $35 a week.

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Q. Have you an association of any kind to get together—for the cut-rate dairies to get together?

Mr. Seelig: I object to that. I would like my witness to answer that question, that one question and I
27 would like to object to any further questions along that line. The question is whether you have an association to determine price.

Mr. Riskind: Q. Answer that. The question was, do you have an association of any kind in regard to these dairies?

A. Yes, we have an organization, yes.

Q. What is the purpose of that organization?

Mr. Seelig: I object to that now. It is entirely improper. This can go afield indefinitely.

Mr. Riskind: Now, if the Master please—

The Master: Just a minute, let us reason it out. You are asking for affirmative relief in a Court of Equity. Now, it is elementary they must come in with clean hands.

Mr. Seelig: Correct, and I am perfectly willing to have this man talk indefinitely on the subject of what effect the association with this organization may have on the price, but I don't feel in a general way—I have no objection in the matter of price at all. I just made the observation in a general way that they can go far afield.

Mr. Riskind: I don't care what you wish. I just want the Master to rule on your objection.

Mr. Seelig: I have no objection.

The Master: Q. Answer the last question of you can, please.

A. Well, we have just an organization there to talk things over between ourselves. Now, for instance, we didn't have a meeting for I guess four or five weeks. Sometimes we have no meetings for two or three months. We talk together once in a while, talk things over about the milk business, about our farmers, about the situation in general. We have a little luncheon—that is all we have there.

Q. You never talk about prices among yourselves?
A. We don't talk about prices, no.
Q. It never has been mentioned at that association of yours at all, has it?
A. Well, we don't talk about prices. That has no bearing at all—
Q. I asked you a question—if prices ever have been mentioned at your association meetings?
A. That we are going to set the price or what?
28 Q. I asked you if price, in any way, has been mentioned.
A. We talk about price of milk, price of cream from our farmers and talk about everything while we are together. We are in the same business line, so we talk things over.
Q. At those meetings, have you ever discussed with Mr. Wagner anything—have you ever talked with Mr. Wagner at those association meetings?
A. I talked with Mr. Wagner, certainly.
Q. And isn't it a fact, at that time, at those various meetings, in your talk to Mr. Wagner, you say you would have your stores sell for eight and a half cents and he has his stores sell for eight and a half cents?
A. No, that was never mentioned.
Q. That is never mentioned?
A. No, we don't talk about price or what he should charge or what I should charge or what the stores should charge. We don't know about that.
Q. And yet your base price is eight and a half cents a quart, isn't that so?
A. No, we have a price there most of our milk is sold at nine and a half cents.
Q. Let me ask you—
Mr. Seelig: Let that appear in the record.
The Master: Certainly, don't interrupt him.
Mr. Riskind: Q. Does any of your milk sell for less than eight and a half cents a quart in the stores?
A. I don't know.
Q. You don't know whether your milk sells for less than eight and a half cents at your stores?
A. I don't know, because they run their stores—they are served by our vendors, by our men. We don't know. We see some stores but we don't see all of the stores.

* * * * *

Q. Now, isn't it a fact that your dairy, through Mr. Kizer and through yourself, paid Mr. Kost two hundred

dollars to go to Washington to try and secure a union charter.

A. I don't know.

Q. You do not know?

A. The dairy didn't pay.

29 Q. Do you know whether Mr. Kizer paid that two hundred dollars?

A. I don't know.

Q. Now, who keeps the books in your concern, who is your bookkeeper?

A. Joe Lhotka.

Q. And what is his address, if you know?

A. It is Berwyn. 25 something Gunderson Avenue, Berwyn.

Q. Now, your help, do you pay them in checks or in currency?

A. In checks.

Q. How much milk did you process January 27, 1938?

A. What time?

Q. How much milk did you process in January of 1938?

A. About $1,200,000 pounds.

Q. That is on January 27, 1938?

A. Oh, for one day? Well, I wouldn't know. I would have to look up the books. I can say for a month.

Q. All right, for the month it is how much?

A. Approximately $1,200,000 pounds.

Q. And in December of 1937, how much did you process?

A. About the same.

Q. And in September of 1937, how much did you process?

Mr. Seelig: Oh, I will object to this.

The Master: Objection sustained.

Mr. Seelig: The volume of business has nothing to do with it.

Mr. Riskind: If the Court please, let me show you why it is so important. They state that there is a violation of Interstate Commerce, that we are restraining Interstate Commerce. Now, if there is a restriction—and I hestitate to say that in front of this witness, because he may so outline his answers—but if we are violating or restraining Interstate Commerce, there should be a diminution of that supply.

Mr. Seelig: The answer is so obvious and so apparent to that, it is ridiculous. These men, through three thousand stores, are selling the same quantity of milk they sold

through four hundred originally. That is the answer to it, and you know that as well as I.

Mr. Riskind: I have a right to prove that there is no diminution of that supply, that the same amount is being sold.

The Master: Ask the question, whether there has been or not.

Mr. Riskind: Q. Has there been any diminution?

A. I didn't get that thing right.

Q. Well, I think I had better ask it the other way. If the Court please, I want to show that through the months they have not done so. I have a right to ask that.

Now, you stated that there was no diminution in January of 1938 and December of 1937. Now, in September of 1937, was the same amount of milk sold by your concern?

A. We get new customers day by day. I don't—

Q. Is that contained in your books?

A. Yes.

Q. Your books and records contain that? All right.

A. We will show that.

Q. Is that summarized in your books?

A. It is summarized, yes. You can see how much milk we used.

Q. Now, have you a contract to purchase milk from that Watertown dairy?

Mr. Seelig: I will object to that.

The Master: He may answer yes or no.

The Witness: A. No.

* * * * *

The Witness: He wants to know if they are employed by the dairy?

Mr. Riskind: Q. Yes, that is all I want to know.

A. Now that is not so easy to say, if they are employed or not. We have contracts, and they are bound to our dairy. They are actually employed by our dairy, but we have the vendor system, where they own their own trucks and they pay their own expenses and they buy milk at a certain price at our dairy. In one way they are employees, and in another way, we don't pay wages. We have to pay whatever they can make over a certain price. We charge them a certain price.

Q. Then you do so that in some ways you regard them as your employees?

Mr. Seelig: Oh, that is purely a legal conclusion.

The Master: He has answered that.

Mr. Riskind: Q. But there are no wages paid to
31 these men, none of the men driving wagons are paid wages?

A. No, sir.

Q. And you did mention the fact that you have contracts with these vendors?

A. That is correct.

Q. Are these contracts written or oral?

A. Written contracts.

Q. With each Vendor?

A. Yes.

Mr. Riskind: Q. Now, you stated that the vendors made between an average of fifty and seventy-five dollars net per week?

A. Yes, sir.

Q. Now, you did state on my former questions that you did not know they have paid to helpers, did you not?

A. I don't know.

Q. How do you arrive at the figure of fifty dollars net per week?

A. At the amount of milk they take out and the profit that is made on it.

Q. Well, do you deduct from the profits the fact that they pay their helpers?

A. Well—

Q. You don't know how much they pay to helpers, do you?

A. I don't know, no.

Q. So you cannot arrive at a net figure, can you?

A. Well, I can still, even if I give them union wages.

Q. How did you arrive at your figures?

A. I say that the average is twelve hundred quarts of milk there. He takes a cent and a half a quart. Now, you figure it out.

* * * * *

A. Well, I know, but that is not in there. I did the work myself, so I know they don't need no helpers. If they want to make it easy for themselves and have a boy helping them, that is their own thing. They make $88.00 or $90.00 a week there. What they do with that money, we don't know. They don't need no helper to deliver a hundred cases of milk.

Q. Now, did you figure out what each vendor pays for his truck?

A. When I say three dollars a day, that includes everything.

Q. Depreciation on the truck?

A. Depreciation, yes, sir.

32 Q. Gasoline?

A. Gasoline.

Q. His original expenditure on that truck?

A. Yes.

Q. But you don't figure helpers?

A. No, not on these. I don't allow anything for helpers, no, sir.

Q. And that is a seven day week that you are figuring, is it not?

A. That is correct.

Q. And not a six day week?

A. All right, that is $88.00. If they have a man there extra for one day, well, it takes that much off. They still have—how much is that a day? $88.00, that is twelve and a half dollars a day for that extra day to pay somebody to take their routes on that day.

Q. That would cut them down to $76.00?

A. That would cut it down to $76.00.

Q. And if they paid a helper forty-eight dollars a week, the union—

A. Mr. Riskind, I just mentioned they don't need no helper. If they have one, well, that is—

Q. I say if they pay their helper forty-eight dollars a week, they would then be making under the union scale, isn't that correct?

A. But they don't need a helper.

* * * * *

Q. Now, supposing that a vendor has dairy products which he has not sold for the day and returns to the plant with some of those products, as a matter of fact, does that ever happen, Mr. Weiss?

A. That happens.

Q. What happens to those products?

A. They are made into buttermilk or butter.

Q. Just one second. Do you take that back?

A. Yes, we do.

Q. Do you give him credit for that?

A. Yes, we do.

* * * * *

Mr. Riskind: Q. Any money at all? Now, you stated on direct, Mr. Witness, that a great deal of violence took

place in 1934 and 1935 against your stores and against some of your vendors, isn't that so?

33 A. Yes.

Q. Did you go to any police station, did you make any complaints to the public officials?

A. We did.

Q. In 1934. Let us get it down to 1934. Did you? Just 1934, Mr. Weiss, did you or did you not?

A. In behalf of the Lake View Dairy, yes, we did.

Q. To whom did you make those complaints in 1934?

A. The State's Attorney's Office.

Q. To whom did you speak there, if you remember?

A. Oh, I don't remember the name now. Captain Eagan, I guess.

Q. Who?

A. Or Lieutenant Tracy.

Q. You made complaints to Lieutenant Eagan and Captain Tracy in 1934, you made complaints to them, and did they do anything for you then?

* * * * *

The Master: Q. Do you know what was done after a complaint was made?

A. No, I don't know. I didn't hear anything from it no more.

Mr. Riskind: Q. Did you sign any warrants against anybody at that time, or anybody from your dairy sign any warrant against anybody in 1934?

A. No.

Q. Now, in 1935, did you make any complaints to any public officials or police officers?

A. Yes, sir.

Q. To whom did you make those complaints?

A. Also to Captain Tracy.

Q. And to Lieutenant Eagan?

A. I think so.

Q. Did you make the complaints personally?

A. I made some of them.

Q. To Lieutenant Eagan of the State's Attorney's office?

A. We called them up to send Captain Tracy or Lieutenant Eagan out to investigate.

Q. In 1938? Do you know of your own knowledge whether anything was done for you?

34 A. No, I don't know.

Q. Now, in 1936, did you make any such complaints to any public officials?

A. Yes, our dairy did, and some stores did when there was violence and picketing.

Q. Just one second. I say, did your dairy? You say you are not interested in any of the stores. Now, I say, did your dairy itself make any complaints to any public officials in 1936?

A. Well, our dairy made some on behalf of some stores.

Q. You tell me that you are not interested in the stores, isn't that so?

A. But we are interested to sell milk there.

Q. But the dairy did not, on behalf of themselves, they did not make any complaints?

A. Yes, they did, too.

Q. To whom? And who made those complaints?

A. I know 7301 Vincennes—

Q. I say, did the dairy itself, on behalf of itself, and who made those complaints? I am not talking about the stores, and that question is very simple.

Mr. Sellig: May I interrupt. When you say or behalf of itself, what do you mean? I don't think the witness understands the question correctly.

The Master: Do you understand the question, Mr. Witness?

Mr. Sellig: Do you understand what he means when he says on behalf of itself?

Mr. Riskind: I think he understands pretty well.

Mr. Seelig: You mean of violence to the dairy, is that what you mean?

Mr. Riskind: Yes.

The Witness: Well, there wasn't any.

Mr. Riskind: Q. There wasn't any violence to the dairy in 1936 at all, is that correct?

A. No.

Q. No violence. Was there any violence to the vendors, not to the stores, in 1936? You can look at Mr. Seelig, but the best thing to do is just answer.

35 Mr. Seelig: I don't know. I can't tell.

The Witness: A. I don't know. It is two years ago. I am trying to recall some incidents I don't recall right now.

Mr. Riskind: Q. But you did state that violence occurred in 1934 and 1935, you remember that very well, do you not?

Mr. Seelig: To the stores, he said.

Mr. Riskind: Now, Mr. Seelig, let the witness answer the question.

The Master: The record speaks for itself.

Mr. Riskind: Q. You don't remember whether any violence occurred to the vendors in 1936?

A. I don't recall.

Q. Now, in 1937, did any violence occur to your dairy?

A. No.

Q. Or to your vendors? Don't you remember?

A. I don't recall, no.

Q. If anything drastic had happened to your dairy, or to the vendors, you probably would remember, wouldn't you, Mr. Weiss?

A. I think so.

Q. But you don't remember that. Now, in 1938, did anything occur to your dairy itself, any violence of any kind?

A. No.

* * * * * *

A. Trucks got stopped, all right.

Q. What?

A. Trucks got stopped.

Q. Did you make a complaint to the public officials?

A. No.

Q. You made no complaints. You just ignored that, didn't you? Did you see an attorney in 1936, 1937, or 1938 to seek some redress for you?

Mr. Seelig: I will object to that.

The Master: Objection sustained.

Mr. Riskind: That is all.

Redirect Examination by Mr. Seelig.

Q. And the Capitol Dairy at that time employed members of the defendant union, that is, the Milk Wagon Drivers' Union?

A. 753.

36 Q. Do you remember what the wage scale was for milk wagon drivers at that time?

A. I think it was $37.50, if I am right, something like that.

Q. And you worked on a route?

A. I helped along.

Q. What amount of pay did you receive as a helper at that time?

A. Fifty cents a day.

Mr. Riskind: When was that?

The Witness: That was in 1928.

Mr. Riskind: 1928?

The Witness: 1929, maybe.

Mr. Seelig: Q. Mr. Weiss, you are familiar with distribution on retail routes employing members of the Defendant Union, are you not?

A. I am.

Q. What is the present wage scale of the Defendant Union for milk wagon drivers?

A. $47.50, is it?

Mr. Riskind: $48.00 and commission.

Mr. Seelig: Q. Now, if a driver on one of these retail routes were to sell the milk at less than twelve cents a quart, would that have any effect on the amount of money he would actually receive at the end of the week?

A. Yes, sir.

Q. Do you know whether or not the practice prevails at this time of selling a substantial proportion of the milk sold on the Defendant Union routes at less than twelve cents a quart?

A. It is.

Q. Is that a substantial amount of the milk that is sold?

A. I think it is quite a number of bottles they sell, each driver sells, for below the set price of twelve cents,

Q. So that, actually, a driver so selling, would receive materially less than $48.00 a week, would he not?

A. Yes, sir.

* * * * * *

Recross Examination by Mr. Riskind.

Q. You say that you know of your own knowledge that milk is sold by members of the union on their routes for less than twelve cents. From whom did you get that
37 knowledge?

A. I got it from customers I seen and talked with.

Q. And from whom did you find out that when a milkman belonging to 753 sells his milk for less than twelve cents, that his wages are deducted in that amount? From whom did you find that out?

A. From customers of mine.

Q. The customers told you that the milkmen's wages were being deducted by the dairy, is that so?

A. So did the milkmen.

Q. Which milkmen did you talk to?

A. Oh, I talked to—

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The evidence has been received as to that being deducted, from various customers outside of the presence of the defendants, and it should be stricken.

Mr. Seelig: It is a very well known fact among dairy men. It is part of what every dairy man knows.

Mr. Riskind: Is that in the record, Mr. Seelig?

Mr. Seelig: A witness has no way of knowing exactly what amount of milk comes in from Wisconsin, either. All of these things are a matter of general knowledge.

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JOHN IGOE:

Cross-Examination by Mr. Riskind.

Q. Now, do you know Mr. Kizer?

A. Yes, I know Mr. Kizer.

Q. Where and when was the first time that you met Mr. Kizer?

A. Oh, in 1935, I guess, was the first time.

Q. Had you had occasion to see him just before the charter of this organization was issued by the C. I. O.?

A. Well, I see him there during different frequent times.

Q. Have you ever talked to him about this organization?

A. Well, sure, I have talked to him.

Q. Now, isn't it a fact that you were present when Mr. Kizer gave Mr. Kost the sum of Two Hundred Dollars to go to Washington?

38 A. No, that is not true.

Q. He never did?

A. He never did.

Q. You are sure that he never did?

A. I am sure.

Q. If he did so, you would know about it, is that so?

A. I presume I would know about it.

Q. Were you present when Mr. Kizer talked to Mr. Kost about this organization?

A. Well, sure.

Q. Was Mr. Seelig ever present at that conference?

A. No.

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Q. When you say that you are not eligible to be a member of 753, what do you mean by that?

A. Well, I am a vendor. I buy milk from the dairy and then I go out and sell it to my stores.

Q. So that you think of yourself as an independent owner, is that right, an independent contractor?

A. That is, I am just a milk vendor.

Q. You are just a milk wagon driver, is that what you mean?

A. I am a milk vendor, I said, not a driver.

Q. Well, how do you differentiate between the members of our union and yours? Will you tell us what the difference is?

A. Well, as far as man to man, I don't know if there is any difference.

Q. You do the same type of work, do you not?

A. Only we deliver wholesale and they deliver retail.

Q. But of your own knowledge, you know that we have wholesale drivers belonging to 753, do you not?

A. That is right.

* * * * * *

The Master: Q. Do you know of any other difference except what you have stated?

A. No, I don't know of any other difference.

* * * * * *

Q. And you stated that the Blue Ribbon hired a
39 man, an employee of their own to take the route on the seventh day, is that so?

A. Yes, they have a man there in case I didn't want to work my route, he would take it.

Q. And the dairy pays him for that seventh day, or you pay?

A. I have to pay him.

* * * * * *

Q. You are sure that on these bottles you sustain no loss at all?

A. If I break a bottle on the truck and it is a broken bottle, I take it into the dairy—

* * * * * *

Q. Now, how much did you pay for your truck?

A. My truck cost me about a thousand dollars.

Q. And what do you figure depreciation at?

A. A dollar a day.

Q. Now, have you any compensation insurance for the man that is employed by you as a helper?

A. No, I haven't.

Q. You have no compensation at all?
A. No, I haven't.
Q. What about your peddler's license, who pays for that?
A. I pay for it.

* * * * * *

Q. Who works that seventh day if you don't?
A. A man from the dairy.
Q. I am sorry, I will have to take this all over again. You did say that you worked six days and your helper worked six days, then on the seventh day the dairy supplied you with a man?
A. I didn't say that I worked six days and the helper worked six days.
Q. What did you say?
A. I said that the helper works six days.
Q. And do you work seven? Answer the question. Do you ever work seven days?
A. No I don't work seven.
Q. Who takes care of the route on that seventh day?
40 A. The helper.
Q. Do you pay him for that seventh day?
A. He works six days and I take the route on the seventh day.
Q. Oh, he takes a day off and you take a day off, is that what you mean?
A. That is right.

* * * * * *

Q. Isn't it a fact, Mr. Igoe, that so far all the dues have been paid by the Wagner and the Lake Valley Dairies themselves to date, that the men haven't paid any dues themselves so far whatsoever? Isn't that a fact, Mr. Igoe?

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Mr. Riskind: Q. I mean Nick Kost; and that was on Clybourn Avenue?
A. No, Claremont.
Q. What is the address?
A. 3513 Claremont.
Q. That is Kost?
A. That is Nick Kost.
Q. And what is the address of Mr. Kizer?
A. 3513 Claremont.
Q. The same address exactly, isn't that so?
A. That is correct.

Q. Who is the owner of that building, Mr. Kizer, if you know?

A. I don't know.

Q. You don't know that. So that it is true that the vice president of the Lake Valley Dairy Company and the president of the union live in the same building, isn't that so?

A. That is true. I don't know what office he holds in Lake Valley. I don't know what office Joe Kizer holds.

Q. Now, I don't remember, I want to get this clear, Mr. Witness. You stated that Mr. Wagner employed milk wagon drivers, not as vendors, but as employees, isn't that so?

A. I think he employs some drivers. I don't know if they are all drivers.

Q. Are any of those men members of your union?

41 A. Yes, they are.

Q. So that those drivers who are eligible to membership in 753 are members of your organization today?

Mr. Riskind: Q. But you are also taking these drivers who are being paid wages by the Wagner Dairy Company, isn't that so?

A. No, we are taking all the independents.

Q. No, I asked one question, that is very easy to answer. I said, those men that are being paid wages by the Wagner Dairy Corporation and are employees of the Wagner Dairies, they are not considered vendors, are they?

A. No, I don't think they are.

Q. Yet they are members of your organization, are they not?

A. That is right.

Q. So that you are not only taking vendors into your organization, but you are taking in milk drivers employed by a dairy, isn't that so?

A. If they are milk drivers, we take them in, sure.

Q. Now, are you acquainted, of your own knowledge, with the wages that Mr. Wagner is paying those employees?

A. No, I am not.

FRANK WAGNER:

Direct Examination by Mr. Seelig.

Q. Was anything further done concerning that incident, your joining the union?
A. Nothing further has been done.
Q. Did you join the union?
A. I gave them ten dollars. I never paid any dues. I never got a button from them. I never got a thing—
Q. Did they ever later follow that up with efforts to make you join the union?
A. They did not.
Q. Have they at any time asked any of your workers to join their union?
A. They have not.
Q. Have they ever visited your plant and talked with your workers concerning joining?
42 A. They have not.

* * * * * *

Cross-Examination by Mr. Riskind.

Q. Have you any dairy drivers?
A. Dairy drivers?
Q. Yes, employed by you that deliver milk?
A. Yes.
Q. How many have you of those?
A. We have ten.
Q. And how many days a week do these ten men work?
A. Six days a week.
Q. Never seven?
A. No, sir.
Q. Who takes the wagons out, their wagons or trucks, out on the seventh day?
A. We have an extra man in the dairy.
Q. One extra man?
A. Two extra men.
Q. How many days do those two extra men work?
A. They work six days a week, also.
Q. Six days a week?
A. Yes, sir.
Q. What time of day do they start working?
A. They start working five o'clock in the morning.

Q. When do they quit?
A. They quit around ten o'clock, eleven o'clock.
Q. The same morning?
A. Same morning.
Q. Never later?
A. Never later.
Q. How much do you pay these men?
Mr. Seelig: Which men?
Mr. Riskind: Q. These dairy drivers?
A. We pay these dairy drivers the average—we have helpers—the drivers get—
Mr. Riskind: I withdraw that question.
Q. What is the lowest wage you pay any of these milk wagon drivers employed by you?
43 A. Twenty dollars per week.
Q. And what is the highest?
A. The highest is thirty-five dollars per week.
Q. You pay none of your men driving milk wagons the sum of forty-eight dollars and commission, do you?
A. No, sir.
Q. Are you acquainted with the present union scale of wages of those members in 753, Mr. Wagner?
A. I am.
Q. You know, of course, that that is forty-eight Dollars a week and commission? Do you or don't you?
A. I do.
Q. Now, have your men any helpers on their trucks?
A. They have.
Q. About how many helpers are employed on those trucks?
A. There is a helper on each truck.
Q. And are those helpers employed by you and paid by you?
A. Yes, sir.
Q. How much do you pay these helpers? What is the lowest you pay these helpers?
A. Eighteen dollars per week.
Q. That is the lowest?
A. Yes, sir.
Q. How many days a week do these helpers work?
A. Six days a week?
Q. And what is the highest that you pay?
A. Thirty-five dollars.
Q. These helpers also?
A. No, the helpers get—
Q. I am talking about the helpers.

A. The helpers get from eighteen to twenty-three dollars per week.

Q. And they only work six days a week?

A. That is right.

Q. How many hours do the helpers put in?

A. Same. They start at five and are through at ten and eleven o'clock.

Q. How many helpers did you say you had working for you?

44 A. Helpers, we have seven helpers.

Q. Now, do you pay these men in checks or in cash?

A. In cash.

Q. You never pay them in checks?

A. No, sir.

Q. Why?

A. Well, that is our ruling at our office. If the men got checks, we have to cash them for them, so we decided we would pay them in cash.

Q. In cash?

A. That is right.

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Mr. Riskind: Q. Does that "Employees" include milk wagon drivers paid by your concern?

A. Yes, sir, that is an employee.

Q. Would you call those employees, those milk wagon drivers that are paid by you, vendors or milk wagon drivers?

A. I would call them milk wagon drivers.

Q. And are they also in this Local 819?

A. Yes, sir.

Q. And those men are the men that receive the lower wage than the men that belong to 753, is that right?

A. Well, of course, if you put it—

Mr. Seelig: I object to that.

Mr. Riskind: If you know.

The Master: If he knows, he may answer.

The Witness: They do not receive a smaller wage for the hours they work.

Mr. Riskind: Q. Do they work less hours, is that it?

A. They do, yes.

* * * * * *

Q. I said would you be willing to pay your drivers the sum of forty-eight dollars a week and commission too?

A. Yes.

Q. If you were offered a union contract from 753?

A. Yes.
Q. You are sure you would?
A. Yes.
Q. And would you be willing to abide by the rules
45 as to hours conditions of labor as stated in the union contract 753?
Mr. Seelig: I object to that.
Mr. Riskind: He has a right to answer yes or no.
The Master: He may answer.
The Witness: A. We cannot abide by their rules and regulations, because their rules in the by-laws, they have no helpers on the truck which we have helpers.
Mr. Riskind: Q. I say the hours. Would you abide by the hours?
A. Yes, sir.

* * * * * *

Mr. Riskind: Q. How many cut rate dairies did you say there are in Chicago?
A. Right off hand there is a number of cut rate.
Q. How many?
A. I would have to really go into that and count them. I would say there is probably twenty-five or thirty. Probably more than that.
Q. Do any of those cut rate dairies employ members of 753?
A. Do they employ?
Q. Yes?
A. I do not think they do.
Q. Are you acquainted with the Wrightwood Dairy?
A. Yes, sir.
Q. Do they sell cut rate milk?
A. Not that I know of.
Q. Are you acquainted with the Boyda Dairy?
A. Yes, I am.
Q. Do they sell cut rate milk?
A. I do not know whether they do.
Q. You do not think they do either? Are you acquainted with the Turner Dairy?
A. I am.
Q. Do they sell cut rate milk?
A. Yes.
Q. Are these dairy's employees members of 753?
A. The Turner Dairy don't belong to them as I understand.
46 Q. All those dairies that I have mentioned are members of 753?

Mr. Seelig: I object. He testified they did not.
Mr. Riskind: No, he did not.
The Master: He may answer.
Mr. Riskind: Q. Do you know whether these dairies I have enumerated here are members belonging to 753?
A. I know the Boyda Dairy does belong to your local. I do not know personally about Wrightwood and I recently heard that Turner Dairy signed up.
Q. What about Palmer Square? Do they sell cut rate milk?
A. Palmer Square?
Q. Yes?
A. No, they do not.
Q. You are sure of that?
A. Yes.
Q. You never seen any of their stores selling their milk?
A. No.
Q. Are the employees of the Palmer Dairy members of 753, Mr. Witness?
A. I do not know that.
Q. You do not know that either?
A. I would not know that.
Q. Are you acquainted with the Silver Cup Dairy, Mr. Wagner?
A. I am not.
Q. You do not know anything about them?
A. No.
Q. Have you seen any of their stores selling cut rate dairy milk?
A. I think I have.
Q. And do you know whether their employees are members of 753?
A. I do not know.
Q. Do you know whether or not the Capitol Dairy sells cut rate milk?
A. The Capitol Dairy does not.
Q. You are sure they do not sell cut rate milk?
A. I am positive.
Q. Do you know whether or not their employees are members of 753?
A. I think they are.

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47 Q. Did you mention their names to the State Attorney's Office?
A. Why should the States Attorney—

Q. Why didn't you mention their names to the State Attorney's office, if you knew them?

Mr. Seelig: Let him answer.

Mr. Riskind: I am cross examining him.

Q. Why didn't you mention their names to the States Attorney's office, if you knew them. If you were held up at the point of a gun?

A. I had no purpose to mention anybody's name. I wanted my truck released from these men.

Q. Did they ask you to identify any of these men?

A. They did not.

Q. Did they ask you to identify them, any of the men that held you up at the point of a gun?

A. They did not even appear.

Q. Who did you talk to?

A. I do not know.

Q. What was his name?

A. I do not know.

* * * * * *

Q. You made no charges against anybody?

A. No, sir.

Q. You signed no warrants against anybody?

A. No, sir.

Q. Did you go down to the States Attorney's Office after that?

A. No, sir.

Q. Did the States Attorney's Office get in touch with you after that?

A. They did not.

Q. You did not get a receipt for that ten dollars, did you, Mr. Wagner?

A. Certainly I did.

Q. From whom did you get the receipt?

A. I do not know if it was from Ray or Mr. Sumner. I have been trying to locate that receipt and I was unable to.

Q. Where did you put that receipt?

48 A. I do not know. I have it. I have been looking in my files trying to locate it and was unable to locate it.

Q. Did you talk to any attorney at that time about this occurrence?

A. No, sir.

Q. Did Mr. Bryant and Fitchie use any of these guns that you say they did?

A. No, sir.

Q. They did not use any of these guns?
A. No, sir.

* * * * * *

Further Cross-Examination by Mr. Riskind.

Mr. Riskind: Q. Now, you stated that the Belmont Dairy had been bombed, isn't that right?
A. No, sir.
Q. Didn't you state on direct examination when your attorney, Mr. Seelig, questioned you as to what happened at the Belmont Dairy, didn't you state that the Belmont Dairy had been bombed?
A. I stated that the Belmont Dairy had the machinery all broken up, the pasteurizers broken, the coolers broken, but I did not state the Belmont Dairy was bombed.
Q. And do you know whether or not a complaint was lodged against the Blue Ribbon Dairy for that outrage by Mr. Belmont?
A. I do not know.
Q. Do you know whether or not the Blue Ribbon Dairy is a cut rate dairy employing non-union help?
A. I do know that.
Mr. Seelig: I object to that.
The Master: He answered.
The Witness: I do know that.
Mr. Riskind: Q. You do know that?
A. I do know that.
Q. And you do not know whether that outrage was charged to the Blue Ribbon Dairy?
A. No, I would not know that.
49 Q. Do you know whether or not the Milk Wagon Drivers Union of Chicago was charged with that outrage?
A. I do not know that.
Q. Do you know whether the Lake View Dairy was bombed at any time?
A. Yes, I do know that.
Q. Do you know whether the union was charged with that or whether Mr. Belmont, the former owner of that Lake View Dairy, was charged with that outrage?
A. No, I would not know who was charged.
Q. You would not know who was charged with that outrage?
A. No.
Mr. Seelig: I would like to inject an objection to the

general form of all of this, when he says, "who was charged," we do not know who charged which and who. I think the form is bad.

The Master: As long as he knows nothing about it, what is the difference?

Mr. Riskind: Q. So that when you make statements that the Lake Valley Dairy and Belmont Dairy were bombed, you do not know who did that bombing, do you?

A. No, sir.

Q. For all you know it may have been the cut rate competitors, isn't that right?

Mr. Seelig: I object to that.

The Master: Sustained.

Mr. Riskind: Q. Now, you did state that the Wagner Dairy had been bombed in 1931, 1932 and 1933, is that right?

A. Yes, sir.

Q. Now, isn't it a fact, Mr. Wagner, that when these bombings took place some other association entirely separate and apart from the Milk Wagon Drivers Union were charged with that crime? Did you know that? Yes or no?

A. Could I hear that statement again, please?

Mr. Seelig: Read it, Mr. Reporter.

(Question read by the reporter.)

The Master: Charged by whom?

Mr. Riskind: Q. Charged by the Wagner Dairy with that crime?

The Master: All right, let us find out.

50 Mr. Riskind: I am sorry I left that out.

Q. Yes or no, Mr. Wagner.

A. I do not know who they were charged with. I would not know that.

Q. Didn't you file a complaint against another association charged them with the bombing at that time? Didn't your dairy do so?

A. No, sir, not that I know of.

Q. You are sure of that?

A. Yes, sir.

Q. Didn't you apply to the Superior Court of Chicago for an injunction against the Pure Milk Association to prohibit such bombing?

A. We did file but not against bombing.

Q. What did you charge the Pure Milk with at that time?

A. Interfering with our milk business.

Q. But you did not charge them with bombing?
A. No, sir.
Q. You are sure that that allegation was not made in the bill?
A. I do not recall.
Q. And didn't you get an injunction against the Pure Milk Association?
A. We did.
Q. The Milk Wagon Drivers Union at that time was not charged with that offense, was it?
A. I do not think so.

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Q. Are those the only three stores you mentioned as being picketed at the present time?
A. That is right.
Q. Or being picketed within the last month?
A. That is right.
Q. Out of the entire 336 stores that you said was dairy supplies, you have only three stores being picketed at the present time, isn't that so?
A. No, sir, I cannot tell you the exact street numbers of the stores. I have to have the record here.
Q. You do not know them now?
A. I cannot memorize them, no, sir.
Q. You say there are about fifteen altogether that
51 are being picketed altogether out of the 336 stores?
A. Twelve to fifteen, to my memory.
Q. Out of the 336 stores?
A. That is correct. That is in the last month.
Q. That is in the last month?
A. That is correct.

* * * * * *

Q. Now, how many times have you driven milk trucks yourself?
A. Oh, quite a lot.
Q. You do not belong to any union yourself, do you?
A. I do now.
Q. Which union do you belong to?
A. I joined the C.I.O.
Q. You also joined the C.I.O.?
A. Yes, sir.
Q. And have you any other managers besides yourself?
A. Managers? No, sir.
Q. When did you join the C.I.O., Mr. Wagner?
A. Around April 15th.
Q. And did you pay dues?

A. Yes, sir.
Q. And do you know how they intend to regulate your wages?
A. A matter of time, yes.

A. No, they have not.
Q. Not a word about that?
A. No, sir.
Q. When did you say you joined, Mr. Wagner?
A. I would not exactly know the date unless I looked at the form.
Q. You have no idea what date it was, have you?
A. I do not recollect what that date was, no.
Q. Are you sure it was the month of April you joined?
A. I do not know unless I see that form.
Q. Have you a membership card in that union, Mr. Wagner?
A. Yes, sir.
Q. Have you it here?
A. I haven't.
Q. Where is it, do you know?
A. At the dairy.
52 Q. You keep it in the dairy? You do not keep it on your person, or did you just happen to leave it there today?
A. I leave all my things at the dairy.
Q. When did you sign this contract with the C.I.O., 819?
A. I would not know, Mr. Riskind, unless I looked on the form. I would not know the date. I would not memorize the date.
Q. Was that before or after you became a member of 819, Mr. Wagner?
A. Was it what?
Q. Did you sign this contract before or after you became a member of 819?
A. We signed the contract before.
Q. Before you became—before your men also became members of 819?
A. No, sir.
Q. You signed it before?
A. I signed it after the men.
Q. And before you became a member?
A. After we signed the contract, then I took membership in the union.

Q. Now, this contract is signed by the Wagner Dairy Products by Frank Wagner, is that right?

A. That is correct.

Q. Are you an official of this organization?

A. I am.

* * * * * *

Q. Then, you have a personal interest in this union outside of being an employer, have you not?

A. Outside, yes.

Q. You have a personal interest in this organization outside of being an employee, too, haven't you?

A. I have—

Mr. Seelig: I object to that.

The Master: He may answer.

The Witness: A. No interest outside of being a member.

Mr. Riskind: Q. That is the only interest you have?

A. That is right.

Q. What is your salary per week at the dairy?

53 A. $35 per week.

Q. You smile at that don't you?

Mr. Seelig: I will ask that Mr. Riskind's remarks be stricken from the record as improper.

The Master: Strike it out.

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Redirect Examination by Mr. Seelig.

Q. Do you know how many men are employed on a wholesale route using members of the Milk Wagon Drivers' Union, Local 753?

Mr. Riskind: Will you state that question again? I didn't get it.

Mr. Brussel: You mean in the entire city of Chicago?

(Question read by the reporter.)

The Witness: A. Just one man.

Mr. Seelig: Q. How many employees do you use on each wholesale route at your dairy?

A. Two men.

Q. What is the cost to a dairy for salary, on a wholesale route employing men who are members of the Milk Wagon Drivers' Union, Local 753?

Mr. Riskind: I am going to object.

A. Forty-eight dollars and commission.

Mr. Riskind: Just one second.

The Master: He may answer, if he knows.

Mr. Riskind: We haven't brought that out.

Mr. Seelig: You brought that out exactly on cross examination. What is the answer?

A. Forty-eight dollars a week.

Q. What is the cost to your dairy for each wholesale route, for salary?

A. Fifty-five dollars to sixty dollars per week.

Q. How many hours a day do the drivers and helpers on these routes work?

A. They work five hours per day.

Q. Do any of these men have additional employment after they leave your dairy at ten o'clock in the morning?

A. They do.

54 Q. How many hours would a man have to work to distribute the same amount of milk if he worked alone on that truck?

Mr. Brussel: I object to that.

The Master: He may answer if he knows.

The Witness: A. From eight to ten hours.

Mr. Seelig: Q. Are the helpers on your truck old or young men?

A. They are men from the age of twenty to twenty-two years of age.

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Recross Examination by Mr. Brussel.

Q. Mr. Wagner, what other dairies are being organized at the present time by the C.I.O.?

A. Well, the Blue Ribbon Dairy.

Q. Any others?

A. I think the Edgewater Dairy is organized.

Q. Any others?

A. The People's Dairy.

Q. Any others?

A. That is all I know of.

Q. Did you speak to any official of the Blue Ribbon Dairy in the last thirty days?

A. I did not.

Q. Have you spoken to any official of the Edgewater Dairy in the last thirty days?

A. I have.

Q. To whom have you spoken?

A. To Mr. Garrity.

Q. That is the gentleman you testified you talked to before at the time you first found out of the C.I.O. union?

A. Yes, sir.

* * * * * *

Q. Did you have any reason at all for joining the C.I.O., Mr. Wagner?

Mr. Seelig: I object to that.

Mr. Riskind: It is all along the same line.

The Master: He may answer.

The Witness: A. Yes, I did.

Mr. Brussell: Q. What was your reason?

A. We wanted to belong to the union.

55 Q. And what did you think the union was going to do for you, if anything?

Mr. Seelig: I object to that.

The Master: He may answer.

The Witness: A. It was going to help us all around in our general business.

Mr. Brussell: Q. Help whom?

A. To our business.

Q. You mean the Wagner Dairy Company?

A. Yes, sir.

Mr. Brussell: That is all.

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MINNA KUELLMAR:

Direct Examination by Mr. Seelig.

Q. And what, if anything, happened about that time concerning your store premises?

A. My store—the windows got broke.

Q. When was that?

A. That was about three years ago or four years ago.

Q. And what if anything else happened?

A. Well, there was a milk strike on and my driver drove the truck and my husband and I followed him in the truck and as we got to the Outer Drive—

Mr. Riskind: Q. That was three years ago, would you say?

A. No, about five years ago. A truck pulled up—a car pulled up with about five men in it and forced the driver over to the curb and shot at him and missed him by his face and my husband and I shouted at the five fellows in the car and we took the kid out of the truck and ran back to Broadway and Montrose to get a police officer and by the time we got back they had poured gas on the car and

the whole truck was on fire and the fellow that worked for—what do they call them things—to put the fire out with—a fire demonstrator.

Mr. Seelig: Q. A fire extinguisher, you mean?

A. Yes, he put the fire out and in the meantime a couple of ladies come along and they seen them and they thought it was us and took a crank and smashed the lady's windshield and cut her face and it was full of blood.

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56 *Cross-Examination by Mr. Riskind.*

Mr. Riskind: If the wages of our men belonging to 753 were lowered or injured because of this cut-rate milk being delivered by non-union drivers, would that stop you from taking cut-rate milk?

Mr. Seelig: I object to that.

The Master: She may answer.

The Witness: A. I must—

Mr. Riskind: Yes or no.

The Witness: A. I did not get the answer.

Mr. Riskind: Read the answer to her.

Mr. Seelig: I feel that question requires a conclusion. It is inconsistent with all the elements.

The Master: Let her answer.

Mr. Seelig: What right have we?

The Master: Let her answer.

The Witness: A. I do not want to answer.

Mr. Riskind: Q. You do not want to answer?

A. No.

Mr. Riskind: Q. May I ask the Court to instruct her to answer?

The Master: You may answer the question.

The Witness: I still haven't got the answer quite clear.

Mr. Riskind: Read it again to her, please.

(Question again read by the reporter.)

The Master: Put it in simpler language.

Mr. Riskind: Q. If the system by which you get your cut-rate milk delivered—

A. Yes;

Q. —by the members and drivers of 753 is such that wages are lowered and hours and working conditions increased, conditions made worse, would that stop you from buying cut-rate milk?

A. No.

* * * * * *

Q. And why did he give you the card? Did he tell you why he gave it to you?

A. So we won't have any pickets.

57 Q. So you won't have any pickets, and that was the only reason he gave it to you?

A. That is right.

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JOSEPHINE HALL:

Re-Cross Examination by Mr. Riskind.

Q. Have you ever been bothered since that time?

A. Another window was broken.

Q. But you don't know by whom?

A. No, I don't know and this last time my milk sign was thrown right in the window.

Q. And you don't know by whom?

A. This last time the boys admitted—

Q. The U. S. Treasury men admitted they broke the window?

A. Yes.

Q. Did they tell you why?

A. They said they were drunk.

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MRS. ALVINA PUSZKIEWICZ:

Cross Examination by Mr. Riskind.

Q. Now, Alvina, you say Mr. O'Connor talked to you very nicely there, did he?

A. Yes, he did not threaten me at all.

Q. Didn't he tell you the reason these dairies were able to sell cut-rate milk was because they were not paying the union drivers a living wage of forty-eight dollars a week?

A. Yes, sir.

Q. And he told you the only reason they sell milk so cheaply is because they were paying so little?

A. Yes.

Q. And he explained it all very thoroughly to you, didn't he?

A. That is right.

Q. And he stated that they were not paying the Milk Wagon Drivers a decent wage?

A. Yes.
58 Q. And he showed you that was the reason?
A. Yes, sir.
Q. And you were interested in making your own living and not interested in the men making a living selling milk?
Mr. Seelig: I object to that. We have shown that we pay our men higher wages than you do yours.

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Q. He is your milk driver?
A. Yes, sir.
Q. And when he gave you this sign, did he tell you something about it?
A. He told me I could be prefectly safe if I would put that in the window and he told me they joined the union and they were organized and I would be safe to sell the milk, but when these pickets came around and told me it wasn't any good and the other union doesn't recognize it, then, I took it off.
Q. Then you took it right off?
A. They were out there. What good did it do to have the sign in the window?
Q. Did he tell you when he gave you that sign the only purpose in making up the sign was to try and destroy the local 753?
A. Yes, sir.
Q. He told you they were trying to destroy the Milk Wagon Drivers' Union?
A. What is that?
Q. They told you they were trying to wreck the Milk Wagon Drivers' Union number 753?
A. Yes, the union did.
Mr. Riskind: That is all.
The Master: Call the next.

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MARIE LAYCHAK:

Direct Examination by Mr. Seelig.

Q. And what result did the picketing have on the quantity of milk you sold?
A. Well, I did not lose any milk business but my restaurant business fell down so bad I had to close.
Q. Your business is primarily a restaurant business?
A. Partly, yes. There isn't enough there either way to make a fair living, so that is why I took in the milk.

* * * * * *

59 *Cross Examination by Mr. Riskind.*

Q. The fact that this cut rate milk was sold so cheap because of lower wages paid to the drivers, did that make any difference to you?

Mr. Seelig: I object to that. It states a conclusion that it is so cheap because of lower wages, which is not so.

Mr. Riskind: If it were so, would that make any difference?

Mr. Seelig: I object to that. It is purely conjecture, if the Court please.

The Master: I do not think so.

The Witness: A. I would still sell it.

Mr. Riskind: Q. You would still sell it?

A. Yes, I certainly would.

* * * * * *

Q. Now, you say your sales did not drop off the milk, didn't you?

A. No, my sales are the same.

Q. They are the same?

A. Yes.

Q. The picketing did not affect the sale of your milk?

A. Not the milk business, not at all.

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60 GUST PALMER:

Direct Examination by Mr. Riskind.

Mr. Riskind: Q. Will you tell us what occurred at your plant and when?

A. Someone got in the dairy about five months ago and broke our machinery.

Q. What do you mean, "broke up the machinery"?

A. They broke the machinery with a sharp instrument, with a pick. They broke our pasteurizers, our filter, our cooler and our motors.

Q. Did you cause anybody to be arrested?

A. Yes, I did.

Q. Who were those parties, if you know?

A. That was the president and the secretary of the Uptown Dairy.

Q. Are they associated with the Blue Ribbon Dairy, do you know?

A. Yes, they are.

Q. Now, are any of your drivers members of Local 753?
A. I do not know.
Q. You do not know whether your men are members of 753?
A. I do not know.
Q. Would you call yourself a cut-rate dairy?
A. In a way, we are.
Q. What do you mean by in a way you are?
A. We sell cut-rate, and also we sell full price.
Q. Did you at any time charge the members of Local 753 with the commission of that outrage at your dairy?
Mr. Seelig: I object to that. I do not think it is material who he charged.
The Master: He may answer.
Mr. Riskind: Q. Did you?
A. No, sir.
Q. Do you know whether any member of 753 did this to your dairy?
A. I do not know.
Mr. Seelig: I object to that.
The Master: Q. Do you know who did it?
The Witness: A. Well, I do not know.
Mr. Riskind: Q. Had you received any threats from any members or any drivers belonging to the Blue Ribbon Dairy and Uptown Dairy prior to the outrage at your dairy?
61 A. We did.
Q. From whom?
A. From the secretary of the Blue Ribbon Dairy and Uptown.
Q. And what is his name?
A. Ingraffia.
Q. What were the threats?
A. The threats was if we are taking more business from them, we would be very sorry.
Q. Did you inform the police about this when you had the men arrested?
A. We did?
Q. Now, do you know whether the Blue Ribbon and Uptown are cut-rate dairies?
A. What?
Q. Do you know whether the Blue Ribbon and Uptown are cut-rate dairies?
A. They are cut-rate dairies.
Q. Do you know whether or not their men are members of the union, Local 753?
A. I do not know.

Q. Now, were you ever an officer of the Lake View Dairy which is now known as the Lake Valley Dairy?
A. I was an officer of the Lake View Dairy.
Q. Yes, until what time were you so an officer?
Mr. Seelig: I object to that. Not material.
The Master: He may answer.
The Witness: A. Until the last part of 1936.
Mr. Riskind: Q. And what office did you hold?
A. President of the company.
Q. Did you know a man named Sigfried Weiss at that time?
A. Will you point him out, please?
A. There is the gentleman, with glasses.
Mr. Riskind: For the purpose of the record, the witness is indicating Sigfried Weiss.
Q. Did he hold a position at the dairy at that time?
A. He was traffic manager.
Q. And what salary did he receive?
Mr. Seelig: I object.
62 Q. Now, have your stores been picketed by members of 753?
Mr. Seelig: I object to that.
The Master: He may answer.
The Witness: A. My stores, yes, they do.
Mr. Riskind: Q. Are they being picketed now?
A. They do.
Mr. Riskind: That is all.

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JOSEPH SCHLEE:

Cross Examination by Mr. Seelig.

Q. You don't know anything about Lake Valley, do you?
A. I know they are in business and I know who is connected with it and all that.
Q. Well, then, you haven't any knowledge whatsoever as to what Lake Valley vendors make at this time, have you?
A. Well, yes, I have, because Lake View and Lake Valley, I understand, are combined into one and I know quite a few vendors that have been over there and some of them even left and went different places.

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Re-Direct Examination by Mr. Riskind.

Q. You say you are not on good terms with Mr. Kizer?
A. No, sir.
Q. Why are you not on good terms with Mr. Kizer?
A. Well, first of all, he cheated me out of some money.
Q. How much money?
A. I put in about thirty-five hundred dollars in the Lake View Dairy and they pushed me around so much that I had to get out and get out with about twelve hundred dollars.
Q. Is that the only reason you are not on good terms with Mr. Kizer?
A. Yes, sir.

* * * * * *

63 STEVE SCHOSTOK:

Re-Direct Examination by Mr. Riskind.

Mr. Riskind: Q. Why are you opposed to the vendor system?
Mr. Seelig: I object to the question. On direct examination I think it is improper.
Mr. Riskind: I think you asked him that on cross examination.
Mr. Seelig: On cross examination I have a right to.
The Master: Proceed. Let us find out what he has in mind.
The Witness: A. I found out that I make a better living than I used to make before.
Mr. Riskind: That is all.
Mr. Seelig: May I ask just one or two questions?

Re-Cross Examination by Mr. Seelig.

Q. May I ask you, if a vendor made as good a living as you and he worked as short or shorter hours, you wouldn't object to being a vendor, would you?
A. Well, not exactly, but I found it was impossible to.

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WALTER JOB:

Direct Examination by Mr. Riskind.

Q. Were you at any time a vendor of milk and dairy supplies?

A. Yes, I was.

Q. For whom?

A. Well, I had my own route. I used to buy my milk from the Reliable Dairy.

Q. And was that a union dairy at that time?

A. No, sir.

Q. Was it a cut-rate dairy at that time?

A. No, sir, it was not.

Q. You sold your milk at the regular prices?

A. Yes, sir.

Q. And how many days a week did you work as a vendor?

A. Seven days a week.

Q. And can you state here what your net earnings were per week.

64 A. Around fifteen dollars per week.

ALPHONSE ZELLER:

Re-Direct Examination by Mr. Riskind.

The Witness: A. I think it is the wrong kind of an answer, so I had better refrain from answering.

Mr. Riskind: Q. No, give us the answer. I want it. Why are they able to undersell you?

A. The dairies are able to undersell because they own no trucks and do not pay any wages and no overhead at all to pay, compared to the overhead we have; charging for the bottles—that was my tremendous loss at that time.

Q. As I understand you, you suffered a tremendous loss because of that?

A. Yes, sir.

Q. And that was the reason you objected to it?

A. Yes, we were charged with all bottles, twenty-five cents on every case we took out. The dairy could not lose a cent.

Q. It was because they paid you no wages that they were able to do it?

Mr. Seelig: I object to that. Just a moment.
Mr. Riskind: Q. Is that the reason?
A. Yes, because of that.
Q. Is there any further reason you objected to the vendor system?
A. Well, the two main items are the question of underselling us in price and the earlier hours, which is a large item. A lot of our trade we lost and couldn't hold simply because the other men got there earlier.
Mr. Riskind: That is all. I think he has given us a lot.
Mr. Seelig: Yes, he has given considerably and I think he is a very truthful witness, too.
Mr. Riskind: Yes.

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HARRY WALD:

Direct Examination by Mr. Riskind.

Q. Who is Mr. John O'Connor?
A. He is supervisor over the pickets.
65 Q. Now, just tell us what those instructions were?
A. And he instructed me to wear the banner and not to talk to anybody, just to walk up and down in front of the store, and if we are caught talking to anybody, we are pulled off the job and fired.

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Q. When you say your men were thrown out of work, what do you mean by that?
Mr. Seelig: I object to that, if the Court please.
The Master: He may answer.

* * * * * *

The Witness: A. For the simple reason that the vendors, they work longer hours and draw less pay than the union drivers do.
Mr. Riskind: Q. And has that caused any kind of competition between your drivers and the vendors?
A. Well, it has.
Q. What kind of competition has that caused?
A. Because if we aren't out on the street all day, we lose our business, practically, because the vendors are out practically day and night, going after a lot of business.
Mr. Riskind: That is all.

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Cross Examination by Mr. Seelig.

Q. Now, all of this picketing has taken place at stores that are selling cut-rate milk, is that correct?

A. No, Just the stores that carry non-union milk.

Q. Well, as a matter of fact, when you refer to non-union milk, you mean cut-rate milk, do you not?

A. I mean—

Mr. Riskind: Objection, if the Court please. Just one second. Don't answer until I make an objection. I object to that last question he just asked.

The Court: He may answer.

Mr. Seelig: Q. Would you like to hear that question again? Do you remember what the question was?

A. No, sir.

Mr. Seelig: Read that to him.

66 (Question read by the reporter.)

The Witness: A. I mean milk delivered by non-union drivers.

Mr. Seelig: Q. You would have no objection, then, to a store selling cut-rate milk that came from drivers affiliated with another union, would you?

A. As long as they are a union driver.

Q. Now, will you state the address of any store that you have picketed during the last year that did not sell cut-rate milk?

Mr. Riskind: Objection. Just one second, if the Court please.

Mr. Seelig: No, that is very important.

Mr. Riskind: Well, objection to the question. You are calling for a conclusion. That may not be so;

The Master: Do you know?

Mr. Seelig: Well, I withdraw that.

Q. Have you in the last year picketed any store that did not sell cut-rate milk?

A. I don't remember whether I have or not.

Q. You don't remember any store that you picketed in the last year that did not sell cut-rate milk, do you?

A. I don't remember if I have.

Q. You remember, however, that you did picket various stores that sold cut-rate milk, do you not?

A. Non-union milk.

Q. Selling milk at cut-rate prices?

A. No, sir. We are not interested in cut-rate prices at all.

67 Q. But do you or do you not remember that any of the stores that you picketed during the last year sold cut-rate milk?

A. All I picketed was stores that carried non-union milk.

Q. You have no idea as you sit there whether they sold milk at cut-rate prices or at the same price as delivered milk, do you?

A. As far as the price, I don't know anything about the price at all.

Q. Do you mean that you don't know the price at which milk was sold at any one of the stores you picketed in the last year?

A. I wasn't interested in the price.

Q. Then the answer is, you do not know?

A. I do not know.

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BERNARD F. RICHARDS:

Cross-Examination by Mr. Seelig.

Q. During that same period, referring to the past five years, have you seen any stores that suffered any other acts of physical violence against them?

A. Well, what do you mean? Besides windows broken?

Q. I mean windows broken, stench bombs or injuries of any other kind, price signs torn down, have you seen any?

A. Yes.

Q. About what number of those incidents would you say you have seen during that period?

A. Well, if you want to take it from the time I started, that was August, 1934.

68 * * * * *

Q. You are opposed to the sale of cut rate milk, are you not?

A. Well, I am opposed to the vendor system.

Q. Why are you opposed to the vendor system?

A. Well, their hours are longer and it is a cheaper commodity.

Q. What do you mean by a cheaper commodity? You used the expression on another occasion.

A. It is two or three cents cheaper, I told you about.

Q. Yes? And what other objection have you to the vendor system?

A. They don't belong to the union and their hours are longer and I know they don't get the pay we do. And—

Q. Now,—pardon me. Is there anything further you wish to say on that?

A. That is all.

Q. Now, as a matter of fact, if the vendor would belong to the union and get as high or higher wages and worked the same number of hours, you would have no objection to the vendor system, would you?

A. If they belonged to the union I belong to, I would not.

Q. But if they belonged to any other union, you would oppose them, is that correct?

A. If I thought it was an outlaw or didn't—wasn't the right kind of a union.

* * * * *

COLUMBUS STELLE:

Cross-Examination by Mr. Seelig.

Q. Would you be opposed to the distribution by vendors if the vendors worked shorter hours and made more money than a milk wagon driver?

A. Well, all I am interested in is in a union driver.

Q. But, if a vendor were a member of a union and had good working conditions, would you be opposed to that?

A. Not, if he was a member of the Milk Wagon Drivers' Union.

Q. But, if a member of any other union and had good working conditions, decent living wages, would you object to that?

A. Well, not if he had an American standard of living wages.

* * * * *

69 CHARLES SEGALE:

Cross-Examination by Mr. Seelig.

Q. The stores that you picket, those are the stores that sell cut-rate milk, is that right?

A. Well, they sell non-union milk. I don't know whether it is cut-rate or not.

Q. Will you name any store that you have ever picketed that did not sell cut-rate milk?

A. Well, I don't really know whether it is cut-rate milk. All I know is they are not being supplied by union drivers.

* * * * *

Q. When you talked about vendors' competition on direct examination, you were referring to retail vendors, were you not?

A. Yes.

Q. You were not referring to cut-rate milk stores, were you?

A. No, sir.

Q. What objection have you to the sale of cut-rate milk in stores at this time?

A. I haven't any objection to any cut-rate milk. It is just that it is non-union, that is all.

RAY BRYANT:

Direct Examination by Mr. Riskind.

Q. Now, Mr. Bryant, have the union commenced to place pickets at any of the stores selling milk delivered by men not belonging to Local 753?

A. We have.

Q. When did that first commence?

A. Oh, I should judge three or three and a half years ago.

Q. Would you say it was about 1934?

A. I think so, yes.

Q. Will you just tell us why you started the first picketing?

A. Why, we did not want to see any of our union drivers lose their business to these non-union dairies and we put the pickets on in order to try and educate the public that this store was selling non-union milk and hoped that it would have an effect on that store keeper, so
70 that he would return to a union driver, and it was very successful.

Q. Has that been successful to date?

A. It was very successful.

Q. Now, about how many stores were picketed before April 25th, 1938, an average per day, I should say?

A. I have about twelve men working; I should judge six.

Q. Six stores were being picketed per day?
A. Yes.
Q. Before April 28th, 1938?
A. The number of our pickets changed at various times. At one time I had more, but it dwindled down to about twelve in the last year and a half.
Q. How many pickets are employed by the Milk Wagon Drivers' Union, Local 753, at the present time?
A. Pretty close to a hundred and forty.
Q. And when did you increase the number of pickets?
A. After May 1st.
Q. 1938?
A. Yes.
Q. Why?
A. For two or three years we had been hampered in picketing on account of a court order which restrained us from picketing the outlets of one of the largest independent dealers in Chicago, and on the twenty-fifth of April, that restriction was removed and we were allowed to peacefully picket.
Q. Removed by the court?
A. Removed by Judge Fardy in the Superior Court.
Q. And because of that, you immediately—
A. I did not immediately, no. That was on the twenty-sixth, and there was quite a little consideration on it for several days and it was about May 1st or May 2nd that I started to put on the new men, and I put on twenty-five or thirty a day for several days, until I got up to the present number.
Q. Are the stores of the Lake Valley Dairy and the stores of the Wagner Dairy the only ones that are being picketed at the present time?
A. No.
Q. Will you tell us just what stores you are picketing at the present time, and what dairy supplies they handle?
71 A. Well, I will have to admit that the majority of the stores we are picketing today are stores serviced by the Meadowmoor Dairy. There is several Lake View, and maybe two or three Wagner. I know there is a Belmont stop or two being picketed, and possibly a couple of stops of the Blue Ribbon-Uptown.
Q. The Wagner and Lake Valley Dairies were not singled out for any specific purpose, were they?
A. At no time.

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Q. Before the vendor system started, did you have any men on relief?

A. No.

Q. And after the vendor system started, did you have any men on relief?

A. We did.

Q. About how many?

Mr. Seelig: I object to that. I think it is all immaterial.

The Master: He may answer.

The Witness: A. We had up to eight hundred, at one time, that we were paying.

Mr. Riskind: What do you mean by paying?

Mr. Seelig: Pardon me. For the record, what do you mean by relief? Do you mean government relief?

Mr. Riskind: Union relief. I should say, union relief.

Q. By that you mean union relief?

A. Union relief, yes.

Q. All right?

A. In 1931, I believe a lot of men were losing their jobs on account of this system that had come into the business and we wanted to take care of them, so the boys assessed themselves a dollar a week to take care of those men that were not able to find positions.

Q. By that you mean the men who were employed assessed themselves?

A. A dollar a week.

Q. To take care of the unemployed?

A. To take care of the unemployed members.

Q. Yes?

A. A little later, the number got so large we had to cut it down to fifteen dollars, I think after six or eight months.

72 We carried them along for pretty near a year and then the last year, why, we had to cut it down to eight dollars a week. We had this in effect for thirty months and then the men coming in twice a week and getting that eight dollars and they seemed to have no desire, I guess, to get anything else to do, and our men got disgusted and they voted in open meeting to stop the assessment.

Q. Did the union suffer any financial loss by this relief?

Mr. Seelig: I object, that is immaterial.

The Master: I think he may answer.

The Witness: A. We contributed about a hundred and fifty thousand dollars from the treasury to this relief fund. That is over and on top of the assessment.

Mr. Riskind: Q. Now, Mr. Bryant, were the books of the union closed at any time?

A. They were.

Q. What do you mean by books being closed?

A. We stopped taking in members. That was in the winter of 1932. We took a reduction in wages at that time, and in order to get our men back to work, to take care of our own members, we entered into an agreement that there would be no new men hired. Our books were closed at that time to any new men coming into the organization.

Q. And for what period of time were they closed?

A. I guess about three years.

Q. Now, was any exception made?

A. Yes.

Q. What exception?

A. Vendors.

Q. Did you take vendors in while your books were closed?

A. We did.

Q. Why?

A. Well, we wanted to clear up the market and clear up the situation, and when the vendors applied to us to take them in, we took them in. First we took them in and put a fine on them. We thought they had done something wrong, especially, the old members, by going out and entering this other system of delivery, and later on we removed that fine and refunded those that paid the fine, and we opened the doors to the men that wanted to join and become drivers.

Q. Did they agree to the conditions of wages and hours when you took them in?

73 A. Certainly, they secured it. You understand, we took them in, of course, as drivers.

Q. Yes, Now, are the salaries or wages paid to the drivers employed by union dairies ever dependent on the retail price of milk in Chicago?

Mr. Seelig: I object.

The Master: He may answer.

The Witness: A. They do not.

Mr. Riskind: Q. Did the union ever enter into any price agreement with any of the dairies?

A. No.

Q. Were the wages of the men who were members of 753 ever increased when the price of milk was decreased in Chicago?

Mr. Seelig: I object to that. I think that is immaterial.

The Master: Under the combination charge?

Mr. Seelig: All right, let them proceed.

The Witness: A. Yes, I can recall two cases.

Mr. Riskind: Q. Will you tell us just when and how that happened?

A. I think it was 1920; in 1920, March, the price of milk was fifteen cents the first day of March, and it was reduced to fourteen cents, and we were just ending up a three year agreement and they were negotiating with the dealers at that time for an increase, an increase of nine dollars a week, quite a substantial increase, brought out on account of the low wages we had to work for.

Q. What wages were the men receiving at that time?

A. Receiving twenty-six dollars, but working under a three year contract, which called for twenty-one, but they voluntarily had given us one dollar. This was during the war period. They had given us one dollar and the government came in and gave us four dollars more, which made it twenty-six. Of course, we had to live up to our agreement and we lived up to our agreement. We thought we were entitled to an increase and asked for nine dollars a week, they decreased the price of milk on quarts and pints as well, and we went ahead and received our increase after a five day lock-out, raising our wages to thirty-five dollars.

Q. Recently, did that occur?

A. That occurred last year.

74 Q. Tell us when?

A. Last year we signed a contract, the first of May, which granted us a two dollar increase then and a three dollar increase the first of May, 1938.

Q. What salary were you receiving before the first increase?

A. Forty-three dollars. We were getting forty-three dollars and we got up to forty-five and three dollars a week increase was to come into effect May 1st, 1938, and they seen fit to reduce the price of milk from thirteen cents to twelve cents, just previous to that.

Q. And you got your increase anyway?

A. We got our increase just the same without any trouble. It was signed last year.

Q. Now, is this grievance that you have mentioned as to the vendor system directed against the dairies or against the delivery system under which these vendors operate?

A. I repeated several times it is against the system. It reduced our membership. It killed our hours. It is against the system altogether.

Q. Are non-union dairies the only ones selling cut-rate milk at the present time?

A. No.
Q. Who is selling cut-rate milk, if you know?
A. It would be much easier to say who is not. I think there is only one dairy in the City of Chicago to my knowledge that is not selling cut-rate milk.
Q. And who is that?
A. The Wanzer Dairy Company.
Q. And how many dairies have you that employ members of Local 753?
A. It is a kind of hard question to answer. A hundred and twenty odd, I suppose.
Q. And you would say about a hundred and nineteen, or thereabouts, sell cut-rate milk at the present time, is that right?
A. Yes, I would make that statement.
Q. Would you say that the Wrightwood Dairy sells cut-rate milk?
A. To a very great extent.
Q. Do they employ members of the union?
75 A. Yes, sir.
Q. Would you say that the Boyda Dairy sells cut-rate milk?
A. Yes.
Q. Do they employ members of the union?
A. Yes, they do.
Q. Would you say the Palmer Dairy sells cut-rate milk?
A. Pretty near all their milk is.
Q. Do they employ members of the union?
A. They do, inside and outside.
Q. Is cut-rate milk a part of this dispute?
A. I have said right along it is the system that we are fighting and not the price.
Q. All right. Now, has any member of the Milk Wagon Drivers' Union, if you know, ever impeded or stopped the commerce of milk through interstate channels?
Mr. Seelig: I object to that. That calls for purely a legal conclusion.
The Master: He may answer, if he knows.
Mr. Riskind: Q. If you know?
A. I do not know of any such occasion. I will say we have not. You mean, if I understand you right, have we done anything to stop milk coming from another state into here?
Mr. Riskind: Q. Yes?
A. We have not. Of course, I am talking officially.
Mr. Seelig: What is that?

The Witness: Of course, I am talking officially. You are not pinning me down to what John Jones did.

Mr. Riskind: Q. You are talking for and on behalf of the Milk Wagon Drivers' Union of Chicago?

A. Yes.

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Q. I will ask you about that. When you hire them, these pickets, Mr. Bryant, do you give them any instructions?

A. Yes, we do.

Q. What instructions do you give them?

A. I tell them to do exactly what John O'Connor has told them to do. I emphasized we want them to walk up and down and not talk to anybody, and there is one
76 there on duty all day, with the banner, and he is instructed to talk to absolutely nobody. The relief man may, if somebody wants to ask him a question, and talk to him, but I told them to the extent, that they should not do anything ever, further than ask them, if they are in doubt, whether to go in, why to refer them to their office, and if they want to go in, why, they go in. Some deliveries are being made where men do go through, but the majority of them, I will probably say, do not make deliveries.

Q. And you say, again, that is not through threats or molestation of any kind?

A. No sir, through their obligation.

Q. Now, have the union officials ever authorized any violence of any kind to be committed?

A. Not to my knowledge.

Q. And have you ever talked to the men about violence?

A. Yes.

Q. About broken windows?

A. Yes.

Q. What have you told these men?

Mr. Seelig: I object, if the Court please.

The Master: He may answer.

Mr. Seelig: Let us fix the time and place, and everything about it.

Mr. Riskind: He has told it a great many times, that he is unable to—

The Witness: I can fix the time and place, I think of that.

Mr. Riskind: All right, go ahead, if you can.

A. Continually, as I told you before. I called to the States Attorney's office every time there was a broken window, and I have cooperated with them one hundred percent, in trying to get the message to our men that we do

not want anything of that kind, if they do do it. We do not know that they do it, but it looked as though some of them might, and we have got up at meetings and advised against it, and even explained to them the ill effects.

Q. What effects have you explained to them? What have you explained to them as to the effects?

A. We told them it done us more harm than good; done them more harm than good. We have illustrated that to them.

Q. In what way?

A. In stores where windows were broken, and they put up a board. Just like the witness testified the other day she didn't put in another glass and the business of that store increased because the public sympathized with
77 her and if we were doing it, we were doing something to hurt us, but of course, I have my own opinion why most of it was done. It was done to capitalize on—

Mr. Seelig: Just a minute, please.

Mr. Riskind: Q. Do you know why most of this window breaking was done?

A. No, I don't. I have my opinion.

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Cross-Examination by Mr. Seelig.

Q. Will you name the location of any store that has been picketed within the last three months, that was picketed by reason of Borden milk being sold at less than a certain price?

A. There wasn't any.

Q. Was there any picketing at the premises of any Bowman store?

A. There was not.

Q. Was there any picketing at the premises of any Wanzer store?

A. There was not.

Q. Any picketing at the premises of any other store selling products of your union dairies? Let me withdraw that. Has any picketing occurred during that period to any milk store which sold exclusively the products of a dairy employing your members?

A. Why, certainly not, unless—

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STEVE C. SUMNER:

Direct Examination by Mr. Riskind.

Q. I will ask you whether or not the union ever participated in the fixing of the price of milk, either retail or wholesale?

A. No.

Q. Have the union officials, representing members ot the 753, ever sat in any conference where the price of milk was fixed or discussed?

A. No. Do you mean conference with the dealers?

Q. Yes?

A. You can't get those fellows to think of price, even, let along mention it.

Q. Has the union ever attempted to fix the price of milk in Chicago?

A. No, sir.

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The Witness: A. Well, it was somewheres about the middle of February.

Q. Of 1938, Mr. Sumner?

A. Yes, 1938.

Q. Where was that?

A. Over at their dairy.

Q. And why did you go over to their dairy?

A. I got a telephone call from Frank and I was over to the Brown Dairy at Summitt, and he said, "Can you come right over?" And I said, "No, I don't want to, but I will". He said, "It is very important." I said, "All right, I will get right away from here and come over", and I did.

Q. And what did he say to you and what—who was there besides Mr. Wagner and yourself?

A. I think Frank's sister. Is she your sister? Anyways, the girl in the office, I think it is Miss Wagner.

Mr. Wagner: That is right.

The Witness: A. And Frank.

Mr. Riskind: Q. And what did Mr. Wagner say to you, if anything, and what did you say to him?

A. He first told me about the smaller dealers starting an organization, and we talked about different things, and the C. I. O.—

Q. Just give us the conversation in detail, Mr. Sumner, please?

A. We was there about two hours. It is pretty hard to tell you all that was said.

Q. Just tell us what he said to you and what you said to him.

A. Well I said, "Frank, we want your men in the union and we want you to pay the scale and live up to the hours of delivery", and he says, "well," he says, "you know father is an old union man and he was a brewery workman. He belonged to the union and we don't feel right going along here without having it a union dairy". "Well," I said, "that is good. I am glad of that," but he said, "We can't go along on all of your propositions." By the way, I had left a contract previous to that time with him. And he said, "we have to have helpers on the wagons." He said, "Our men can't go out and deliver the goods on time without helpers, and we want the helpers in the union, too." And I said, "Frank, we can't take the helpers in. We want your drivers. We want the inside workers into the other union", and I thought I was going to get
79 money that day, but I said, "Now, Frank—"

Q. Money for what?

A. For initiation of the men.

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A. Well, we talked about the other dealers that were in. There was Maywood Farms, and we have other fellows out there and he said this: "Now," he says, "Steve, they will all do as I do and if you get my men into the union, I will help you get in the others and you will have no trouble". "Well," I said, "all right, Frank, that is fine, but I am not in any position to make any other contract with you than what is there on the paper, and I suggest that you call up Mr. Bryant at the office. He don't know that I am out here".

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Q. Did you ever attempt to organize the Wagner Dairy and when was the first time.

A. About every time I would see him, I would talk about organization.

Q. When was the first time, Uncle Steve, if you know?

A. Well, Frank says he has known me since 1920.

Mr. Wagner: That's right.

The Witness: Somewhere around there.

Mr. Riskind: Q. Some time around 1920, you say?

A. Maybe before. I think before the war.

Q. Now, during the time you talked to Frank Wagner, was the price of milk ever discussed?

A. No.

Q. Did you ever refuse to take the Wagner Dairy men into the union because the milk they sold was at cut-rate prices?

A. No.

Q. Have you ever sought to organize the Lake Valley Dairy?

A. Not with that set-up. I have never been out there.

Q. Did you attempt to organize the Lake View Dairy?

A. Yes.

Q. When was the first time.

* * * * *

Q. And did you attempt to organize the Lake View Dairy?

80 Mr. Seelig: I object, if the Court please.

The Witness: A. Many times.

The Master: He has answered.

Mr. Riskind: Q. Many times?

A. Yes, sir.

Q. Were you successful in organizing that dairy?

A. At one time they took two dollars a week from the men, until they got, the men told me one hundred dollars, and then they didn't get in the union, and they got their money back.

Q. They are not now members of 753?

A. No, they never were.

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MRS. MABLE BRUCE:

Direct Examination by Mr. Seelig.

Mr. Seelig: Q. What took place on this day you have in mind?

A. All I know is we had pickets out there picketing because we had non-union milk.

Q. What pickets were out there?

A. Two gentlemen were there.

Q. There were men that had banners that had some reference to 753?

A. Yes.

Q. Now, what happened on that day? What did you do and what did anyone do?

A. They were picketing and stopping customers from coming in there, and they were talking to them, and we just called the Wagner Dairy up.

JOSEPH KORDA:

Cross-Examination by Mr. Riskind.

Q. And you say it happened in what month and what year—this Ogden Dairy episode?

A. I don't know whether it was the month of April. I don't know the exact year, either, as far as that goes.

81 CHESTER HALL:

Direct Examination by Mr. Seelig.

Q. Were you present when that was said?

A. I was present with my mother when we both talked to this man. He told us he is a representative of this union. What is this union, by the way?

Mr. Riskind: Which union are you talking about?

The Witness: Well, this union that this Mr. O'Connor represents. I have the statement on file at the Chicago Lawn Police Station. It was taken immediately after—

Mr. Seelig: Do you mind if I refresh his recollection?

Mr. Riskind: No, go ahead.

The Witness: The Milk Wagon Drivers Union.

Mr. Seelig: Q. What is that paper you are referring to there?

A. Well, that is the witness subpoena.

A. Oh, I see.

A. He told us that we would have trouble if we continued to handle the milk.

Mr. Riskind: Which milk?

The Witness: A. The Lake Valley milk, which is a cut-rate dairy, and that they didn't have connections with his union, they were—he called them an outlaw outfit or a scab outfit, and he suggested that we take milk from companies that are connected with his union. Well, my mother wouldn't listen to him, so she continued to handle the milk, and they broke our windows shortly afterward.

Mr. Riskind: Objection, now, unless he states who broke the windows, and when and where.

The Witness: The windows were broken about a week after Mr. O'Connor paid us the visit, in the middle of the night. Two bricks were thrown through the large plate-glass windows at night, and the police came and asked us

questions about it, police from the Chicago Lawn station, and we told them about being threatened by this Mr. O'Connor, and this Mr. O'Connor was picked up shortly after that, and I identified him, and then the captain, I believe, from the station, took out a form questionnaire, and he questioned me fully about the threats that were made, and I answered the questions, and I guess they must have it on file; and I know that our windows were put
82 in and they were broken again, and Mr. O'Connor paid us another visit, and we still didn't have anything to do with him, and we lived in constant fear of having—

Cross-Examination by Mr. Riskind.

Q. Now, were any men arrested for breaking these windows?
A. Just Mr. O'Connor was held on suspicion.
Q. No, I asked, was anybody arrested for specifically breaking these windows?
A. No.
Q. Just answer my questions. Are you sure of that?
A. Well, there was a man arrested just recently. There was a window broken, and there was two men arrested.
Q. Do you know who those men work for?
A. Yes.
Q. Who do they work for?
A. Well, this one man's name was Emerick, and I believe he checked payrolls in the Government.
Q. The United States Government?
A. Yes.
Q. And the other fellow?
A. I don't know him.
Q. And neither one of those fellows were milkmen, were they?
A. I don't know.
Q. Well, you know the one wasn't a milkman?
A. Yes.
Q. Have you talked to Mr. Weiss recently?
A. No, just that I called him up last night.
Q. And was that the only time you have talked to him recently?
A. Why yes.
Q. You are sure you have not talked to him at any other time?
A. Absolutely.
Q. Did he visit your store?

A. Why, he visited our store when our windows were broken, when these two fellows came by there, to tell us how much these windows were worth; This man, the
83 father of this boy, wanted to pay for the breaking of the window, and we called Mr. Weiss, to find out how much the window was worth, and he said—

Q. Why did you call Mr. Weiss?

A. Because this man came here with his son that was arrested for breaking of the window.

Q. But how did you happen to call Mr. Weiss to give you a price on the window?

A. Why did we call him?

Q. Yes.

A. So he could handle the matter. My mother gets excited and all, she doesn't know just exactly how to handle those things.

Q. Did you have plate-glass insurance?

A. Why, yes.

Q. Did you call the insurance company?

A. Absolutely.

Q. Why did you call Mr. Weiss, then? Will you tell us why you called him?

A. To come there and talk to the father of the boy.

STEVE SUMNER:

Further Cross-Examination by Mr. Seelig.

Q. You defend—pardon me.

A. Naturally, the union tries to take care of their members. If they are guilty of crime, then we are out.

Q. Then you defend all of your members that are accused of crime in connection with the distribution of milk, do you not?

A. How can I answer that? We don't. If it is called to me that a man is in jail, I generally go over to see what is the trouble. If he is a union member and paid up, I do all that I can too see that he gets a fair trial.

Endorsed: Filed Aug. 15, 1939. Hoyt King, Clerk.

84 IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Eastern Division.

I, Hoyt King, Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, keeper of the records and seal of said Court do hereby certify that the following is an additional portion of the Transcript of Testimony filed in this office on the 15th day of August, A. D. 1939, in case of Lake Valley Farm Products Inc., etc., et al., *vs.* Milk Wagon Drivers Union Local 753 International Brotherhood of Teamsters, Chauffeurs etc., et al., No. 16073.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said Court this 15th day of August, A. D. 1939.

(Seal) Hoyt King.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 270, inclusive, contain a true copy of the printed record, printed under my supervision and filed on the twentieth day of April, 1939, which together with the Supplemental Printed Record, printed pages numbered from 271 to 353, inclusive, printed under my supervision and filed on the eighteenth day of August, 1939, constitutes the record upon which the following entitled cause was heard and determined:

Lake Valley Farm Products, Inc., a corporation; Lake View Cooperative of Watertown, Wisconsin, etc., *et al.*,
Plaintiffs-Appellants,

vs.

Milk Wagon Drivers' Union, Local 753, *et al.*,
Defendants-Appellees,

No. 6900, October Term, 1939, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 26th day of January, A. D. 1940.

Frederick G. Campbell,
(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit held in the City of Chicago and begun on the fourth day of October, in the year of our Lord one thousand nine hundred and thirty-seven, and of our Independence the one hundred and sixty-third.

Lake Valley Farm Products, Inc., a corporation; Lake View Co-operative of Watertown, Wisconsin, an Agricultural Co-operative Corporation of the State of Wisconsin; Amalgamated Dairy Workers Local, Industrial Union No. 819,

Plaintiffs-Appellants,

6900 *vs.*

Milk Wagon Drivers' Union, Local 753, International Brotherhood of Teamsters, Chauffers, Stablemen and Helpers of America, a voluntary association; Robert C. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, Alvin F. Richards and Joseph L. Patterson,

Defendants-Appellees.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

And, to-wit: On the thirteenth day of March, 1939, there was filed in the office of the Clerk of this Court, an appearance of counsel for appellants, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 6900 October Term, 1939.

Lake Valley Farm Products, etc., *et al.*,

vs.

Milk Wagon Drivers' Union, etc., *et al.*

The Clerk will enter my appearance as counsel for the plaintiffs-appellants.

Arthur R. Seelig,
11 S. La Salle St.
Central 7029.

Endorsed: Filed March 13, 1939. Frederick G. Campbell, Clerk.

And on the same day, to-wit: On the thirteenth day of March, 1939, there was filed in the office of the Clerk of this Court, an appearance of counsel for appellees, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 6900 October Term, 1938.

Lake Valley Farm Products, etc., *et al.*

vs.

Milk Wagon Drivers' Union, Local 753, etc., *et al.*

The Clerk will enter our appearance as counsel for the defendants-appellees.

David A. Riskind,
134 N. La Salle St.
Abraham W. Brussell,
100 W. Monroe St.

Endorsed: Filed March 13, 1939. Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the sixteenth day of March, 1939, there was filed in the office of the Clerk of this Court, a Stipulation as to Printing Record, which said Stipulation is not copied here as the same appears on pages 269 and 270 of the printed record in this cause, certified herewith under a separate certificate.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit held in the City of Chicago and begun on the third day of October, in the year of our Lord one thousand nine hundred and thirty-nine, and of our Independence the one hundred and sixty-fourth.

And afterwards, to-wit: On the twelfth day of October, 1939, the following further proceedings were had and entered of record, to-wit:

Thursday, October 12, 1939.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Hon. Walter E. Treanor, Circuit Judge.

Lake Valley Farm Products, Inc., *et al.*, *Plaintiffs-Appellants*, vs. Milk Wagon Drivers' Union, Local 753, *et al.*, *Defendants-Appellees*.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

6900

Now this day come the parties by their counsel and this cause comes on to be heard on the transcript of the record and briefs of counsel and on oral argument by Mr. Arthur R. Seelig, counsel for Appellants, and by Mr. Abraham W. Brussell, counsel for appellees, and the Court having heard the same takes this matter under advisement.

And afterwards, to-wit: On the twenty-ninth day of November, 1939, there was filed in the office of the Clerk of this Court, the Opinion of the Court, which said Opinion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 6900. OCTOBER TERM AND SESSION, 1939.

LAKE VALLEY FARM PRODUCTS, INC., a corporation; LAKE VIEW COOPERATIVE OF WATERTOWN, WISCONSIN, etc., *et al.*,

Plaintiffs-Appellants,

vs.

MILK WAGON DRIVERS' UNION, LOCAL 753, *et al.*,

Defendants-Appellees.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

November 29, 1939.

Before EVANS, SPARKS and TREANOR, *Circuit Judges.*

SPARKS, *Circuit Judge.* This action in equity was instituted by appellants, and Josef Wagner, doing business as Wagner Dairy Products. It sought to restrain appellees from picketing, and from the commission of acts of violence and boycott alleged by appellants to be in restraint of interstate trade and in violation of the Sherman Anti-Trust Law and the Clayton Act. Appellees filed a joint answer which in effect was a general denial and contained other affirmative matters. The issue of injunction was referred to a Master in Chancery, and his report recommended the dismissal of the complaint for lack of jurisdiction. A hearing was had upon appellants' exceptions to this report, and after making special findings of facts, and rendering its conclusions of law thereon, the District Court entered a decree confirming the report, and ordering dismissal for want of jurisdiction and for want of equity.

The findings are substantially as follows: The plaintiffs

are the Lake Valley Farm Products, Inc., an Illinois corporation of Chicago, engaged in processing and distributing milk and dairy products in Chicago; Lake View Co-operative of Watertown, Wisconsin, an organization of Wisconsin farmers; Josef Wagner, doing business as Wagner Dairy Products in Cook County, Illinois; and Amalgamated Dairy Drivers, Local Industrial Union No. 819, a voluntary unincorporated association with its headquarters in Chicago. Before the findings were filed, Wagner, by leave of court, withdrew as party plaintiff.

The defendants are the Milk Wagon Drivers Union of Chicago, Local 753, a voluntary unincorporated association with headquarters in Chicago; Robert G. Fitchie, James Kennedy, Steve Sumner, F. Ray Bryant, Alvin F. Richards, Joseph L. Patterson and Fred C. Dahms, who are officers and trustees of the defendant union.

The Farm Products Company purchases its daily requirements of fluid milk from the plaintiff Co-operative, which receives its product from farmers in Wisconsin, who deliver their milk to the plant of the Co-operative where it is loaded on motor trucks and transported over the public highways to the Farm Products Company in Chicago, which pasteurizes and bottles the milk, after which it is sold by the Farm Products Company to various persons referred to as "vendors," who severally own and operate their own automobile truck equipment. They in turn, after purchasing the milk and cream from the pasteurizing plant, distribute it to various stores which in turn sell it to the general public on a cash and carry plan. These "vendors" are not members of the defendant union.

The plaintiff union was organized on March 1, 1938, and maintains executive offices in Chicago. Its members are residents and citizens of Illinois.

The defendant union was organized in 1902 and since that time has unionized the majority of drivers delivering milk and other dairy products, and its headquarters are in Chicago. All the individual defendants are residents and citizens of Illinois.

Over forty per cent of the milk and over seventy-five per cent of the cream sold in Chicago comes from points outside of Illinois. It is commingled, sold in competition with, and is indistinguishable from the milk and cream which is produced in Illinois. The pasteurization and bottling require a very short time. Nothing is added to or taken from the milk and cream by such process and only a few hours

elapse from the time it leaves the point of origin in Wisconsin until it is lodged in the retail stores.

The Farm Products Company is a cut-rate dairy in that it distributes its milk through retail stores by cash and carry sale, and at prices substantially less than the generally prevailing price for milk delivered by the dairy to the home. Because of the relatively large amount of milk delivered to each retail store, the cost of such delivery is substantially less than the cost of delivering milk on a retail route to the doorstep of the ultimate consumer.

The growth of the cut-rate milk business in Chicago has been accompanied by violence to the distributing stores. They have had their windows broken, they have been bombed, set afire, they have been submitted to stench bombs and to other acts of violence. Cut-rate dairy plants have been bombed, have had machinery smashed, and their delivery trucks have been seized and destroyed, and they have been submitted to other acts of violence.

Picketing by the defendant union has all taken place at and in front of stores selling the products of the plaintiff dairy, and no picketing has taken place at the plaintiff dairy plant. In some instances deliveries of other necessary food products into stores selling plaintiffs' dairy products have ceased.

Fifteen to twenty stores distributing the products of plaintiff dairy were lost in the month preceding the filing of the bill of complaint; twenty-five to thirty stores were similarly lost since the commencement of the action; more than one hundred of such stores have been picketed, and there is no way to ascertain the number of consumer patrons lost by the acts of the defendant. No labor dispute exists between plaintiff dairy and its workers.

The court in its last finding says that it adopts by reference the various findings of fact made by the Master in his report. This report is rather voluminous and contains much that cannot be considered as findings of fact. We find nothing additional in this report which is material to the issues passed upon by the District Court, except perhaps that all of the employees of the plaintiff dairy are members of the plaintiff union and have designated that union as their sole representative in dealing with the dairy. The Master further found that the plaintiffs had not established the fact that they had no adequate remedy at law and had not alleged or proved that the public officers

charged with the duty to protect their property were unable or unwilling to furnish adequate protection.

He further used the following language in his findings:

> "It also appears from the evidence before the Master that certain of the cut-rate milk stores that handled the products of the Plaintiff Dairies were picketed by members of the Defendant Union; that such picketing was usually indulged in for a number of days during which time said pickets sought to induce the offending storekeepers to discontinue the purchase of such milk from the Plaintiff Dairies; that in several instances where their efforts were unsuccessful said pickets were withdrawn and within a few days thereafter, usually during the night the store of the storekeeper (some of whom were poor women struggling to make a living) was either bombed or bricks were thrown through the plate glass windows of such stores or other acts of violence were committed. To request the Master to conclude and find, in the absence of proof of the identity of the guilty culprits, that there was no connection between such acts of violence and the Defendant Union, or some of its members, is to overtax the credulity of the Master.
>
> "The Master cannot condone or too severely condemn the resort to such malicious and cowardly conduct in support of any cause. Such lawless conduct has no place under our form of Government and the few lawless, radical union leaders or members who resort thereto are not only a blight upon the righteous cause of honest labor but reflect discredit upon our country and upon our American civilization as well."

The District Court concluded that it had no jurisdiction on the ground of diversity of citizenship; that the actions of the defendants did not constitute a violation of the Sherman Anti-Trust Law and the Clayton Act; that the defendants' actions did not constitute an unlawful conspiracy, and did not effect an unlawful monopoly as defined by the two Acts last referred to; that the activities of the defendants did not constitute an unlawful secondary boycott or deprive plaintiffs of rights guaranteed to them under the Constitution and laws of the United States or of the State of Illinois; that under the circumstances presented a labor dispute existed as defined by the terms of the Norris-LaGuardia Act; that the court was without jurisdiction to grant the injunctive relief or any part of the relief prayed for by the plaintiffs; that the plaintiffs were not entitled

to any of the relief prayed for in the bill and that the equities of the case were with the defendants.

The decree immediately followed dismissing the cause of action as to Wagner, with prejudice, and overruling the other plaintiffs' exceptions and their application for preliminary and permanent injunction. The decree further dismissed appellants' bill of complaint both for want of jurisdiction, and for want of equity. The language of the conclusions of law and the decree indicates without doubt that the court passed upon all the questions presented, but we have great doubt whether all should have been passed upon. For instance, after the court found that it was without jurisdiction, it is not clear why it proceeded to pass upon the merits. Of course there was no jurisdiction on account of diversity of citizenship, but if there was a violation of the Sherman Anti-Trust Law and the Clayton Act with respect to interstate commerce, there would still be jurisdiction of the cause, and that would carry with it the right to decide rightly or wrongly all questions therein involved. Whether or not there was a labor dispute within the purview of the Norris-LaGuardia Act, or whether there was a conspiracy or a secondary boycott, would seem to us not to be determinative of the question of jurisdiction providing interstate commerce was involved within the purview of all the acts referred to. The bill of complaint was treated as sufficient by all parties except that appellees claimed that both the bill and the evidence showed that interstate commerce was not affected. This contention of course was denied by appellants, and it was the duty of the court to pass upon this question in order to determine whether it had jurisdiction of the subject matter. This it did, holding that it had no jurisdiction. We assume, therefore, that this ruling was based on the ground that interstate commerce was not affected. If this were true, the court was without jurisdiction to pass upon the merits of the other questions presented. If, however, interstate commerce was involved, as alleged, the mere fact that the Sherman or the Clayton Act was not violated, or the Norris-LaGuardia Act not followed, would not defeat the court's jurisdiction to determine those matters, for jurisdiction presupposes the right to decide a question either rightly or wrongly.

Under the facts found, it is clear that there is an actual flow of milk in interstate commerce from the farm-receiving station in Wisconsin, through the plaintiff dairy into the retail cut-rate stores in Chicago. It is equally

clear from the facts found that appellees' activities did seriously burden and affect the distribution of this milk by the stores to their cash and carry customers. In the light of these facts it is maintained by appellants that the court erred in its conclusions of law that the actions of the defendants did not burden or affect interstate commerce, and for that reason did not violate the anti-trust laws. The Master and counsel for appellees seem to have proceeded on the theory that the milk came to rest in the cut-rate stores and thereby ceased to flow in interstate commerce and for that reason the acts complained of did not constitute an interference with interstate commerce within the purview of the anti-trust laws. The findings and conclusions of the court do not specifically mention this reason as a basis for its conclusion, but inasmuch as it adopts the findings of the Master by reference, we assume that the bases of its conclusions are the same as those of the Master. Both seem to have relied upon the "stream of commerce" doctrine which is quite familiar in the application of federal and state taxes. It would seem, however, that this test is not to be used in anti-trust cases, for there the point at which the stream or current of interstate commerce ceases is seldom if ever involved, but the real controversy is the effect of the acts complained of upon interstate commerce. In *Local 167, I. B. T.* v. *United States*, 291 U. S. 293, there was a combination of wholesalers of poultry in New York City to increase the price of and monopolize the wholesale trade in poultry purchased by them from commission men to whom such poultry was shipped from other states. The combination was held to be in restraint of interstate commerce in violation of the Sherman Act, although the purpose was made effective by acts committed within the state after the interstate transportation of the poultry had terminated. The Court said: "The evidence shows that they and other defendants conspired to burden the free movement of live poultry into the metropolitan area. It may be assumed that some time after delivery of carload lots by interstate carriers to the receivers the movement of the poultry ceases to be interstate commerce. (Citing cases.) But we need not decide when interstate commerce ends and that which is intrastate begins. The control of the handling, the sales and the prices at the place of origin before the interstate journey begins or in the State of destination where the interstate movement ends may operate directly to restrain

and monopolize interstate commerce. (Citing cases.) The Sherman Act denounces every conspiracy in restraint of trade including those that are to be carried on by acts constituting intrastate transactions. (Citing cases.)" Again the Court said: "And, maintaining that interstate commerce ended with the sales by receivers to marketmen, appellants insist that the injunction should only prevent acts that restrain commerce up to that point. But intrastate acts will be enjoined whenever necessary or appropriate for the protection of interstate commerce against any restraint denounced by the Act." The same principle of law was followed in *Labor Board* v. *Jones and Laughlin*, 301 U. S. 1; *Santa Cruz Packing Company* v. *N. L. R. B.*, 303 U. S. 453; *National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601; and *United States of America* v. *Rock Royal Co-Operative, Inc.* (June 5, 1939). All these cases followed the doctrine as set forth in *Montague & Company* v. *Lowry*, 193 U. S. 38.

In view of these decisions, and under the findings of the court and the Master, we think it is clear that interstate commerce was involved and was quite seriously affected and burdened by the picketing activities of the defendants in and about the stores that sold the milk in controversy. We find no conflicting testimony as to this fact. We are further of the opinion that the uncontradicted evidence and findings disclose that the Sherman Anti-Trust Law and the Clayton Act were clearly violated.

It is contended by appellees, however, that there is no evidence of conspiracy To prove a conspiracy, it is not necessary to establish it by direct testimony that a precise agreement was entered into by the parties accused. In most cases of that character this would be impossible to do, and for this reason a conspiracy may be safely based upon circumstantial evidence if the circumstances are sufficiently convincing. Everyone is presumed to intend the natural consequences of his acts. Here the picketing activities of the defendants and the results thereof were admitted. The picketing occurred only at the stores, and its admitted object was to induce the storekeepers not to sell the milk. This object was successfully attained and the result was due to the united and confederated actions of these defendants. The immediate result of their accomplishments in this respect was to retard the flow of the milk in interstate commerce from Wisconsin to Illinois. This was the natural consequence of their picketing activities and they were bound to know it.

Indeed, there was no claim by the defendants that they were not fully cognizant of all these facts, and for these reasons we think their acts did constitute an unlawful conspiracy within the purview of the Sherman and the Clayton Acts.

The record discloses, and it is not denied, that the defendant union controls the distribution of practically all the milk that is sold in Chicago. Its only competitors of any consequence are these cut-rate distributors, and if they were eliminated from the field it is not denied that defendants' union for all practical purposes would have a complete monopoly over the distribution of milk in this city. It is clear that this was the object of the defendants and this object was the sole cause of this controversy.

It is contended by appellants that no labor dispute was present in this controversy, and that the acts of the defendants, which are here sought to be restrained, constitute an unlawful secondary boycott designed to destroy the business of the plaintiff dairy. Whether there was a labor dispute is to be determined by the Norris-LaGuardia Act, 29 U. S. C. A. sections 101-115. Subsections (a), (b) and (c) of section 113 are immediately involved here.[1] From the terms of this Act, it would

1. "(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as hereinafter defined) of 'persons participating or interested' therein (as hereinafter defined).

"(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

"(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee."

seem clear that before a labor dispute can be said to exist, there must be an honest issue involved and there must be persons capable of being organized. It is appellants' contention that neither of these elements exists in the present case. It is not denied that the "vendors" referred to in the findings are independent contractors and are not in the employ of the dairy. They buy and sell for their own profit and are not salaried workers. It is conceded also that the owners or managers or employees of the stores which sell the milk to the ultimate consumers are not employees of the dairy or of the "vendors" and none of them are eligible to membership in the defendant union. The defendant union is a craft union for milk wagon drivers who are employees of dairies. A study of this record, including the articles of agreement used between the defendant union and its subscribing dairies, leaves no room for doubt that these "vendors" in their present occupation, or any like occupation, would not be acceptable as members in the defendant union. It is true that some, and perhaps all of them, have been solicited for membership in the defendant union, but such solicitation was upon the condition that they would cease handling cut-rate milk as "vendors" or as employees of the plaintiff dairy, while it was thus engaged. Under these conditions we think it cannot be fairly said that there is a good faith labor issue involved between the defendant union and either the dairies' employees or the "vendors" or the stores. Especially is this true when we consider the fact that the dairies' employees are organized as members of a well-recognized union, which with their consent is acting as their representative in matters dealing with their employers.

A study of this entire record is quite convincing of the fact that this entire controversy is over the question of the sale of cut-rate milk and the "vendor" system. There is no finding that these "vendors" are not receiving sufficient remuneration for their labor, or that their conditions of labor are not what they should be. The evidence is quite convincing to the contrary. In any event, it would seem that the defendant union is in no position to raise those questions as to the "vendors," who are independent contractors, and who in their present condition are not eligible for membership in the defendant union. It seems clear to us that there is no labor controversy involved here.

Moreover, we think it is clear from the findings and from the undisputed evidence in this case that the appellees' picketing activities constitute a secondary boycott, which is an unlawful activity, of which appellees could not avail themselves even though a labor dispute were involved. See *Duplex Printing Press Company* v. *Deering*, 254 U. S. 443; *Meadowmoor Dairies, Inc.* v. *The Milk Wagon Drivers Union of Chicago, No. 753*, 371 Ill. 377. The latter case deals with the same questions here presented, except as to the federal questions, only one of which is presented, and it also involves the same defendant union. It construes the Illinois Injunction Act, which in many respects is quite similar to the analogous federal Acts. The opinion is very well considered, and we are in accord with the conclusions there reached in so far as they are here applicable.

It is contended by appellees, however, that the prevention of peaceful picketing of the cut-rate stores would be a violation of the constitutional right of free speech, although such acts might be considered as a secondary boycott. We do not understand this to be the law. The same question was presented in the *Meadowmoor* case, *supra*, and it was decided adversely to appellees' contention. In that case certiorari was sought in the United States Supreme Court on that particular question, and certiorari was denied. This ruling of the Illinois Supreme Court is supported by *Aikens* v. *Wisconsin*, 195 U. S. 194.

The Master found that appellants had not established the fact that they had no adequate remedy at law, and that there was no proof that the public officers charged with the duty to protect appellants' property were unable or unwilling to furnish that protection. Aside from the procedural requirements of the Norris-LaGuardia Act, we think it is clear from the undisputed evidence that appellants had no adequate remedy at law. Inasmuch as we hold that there was no labor dispute involved, appellants were not authorized or required to proceed under that Act. With respect to the ability of the police officers to cope with the situation, we think it is clear from the number of stores involved, and the magnitude and seriousness of the activities which had continued for several years, that the police officers were unable to control the situation.

Without any intention to criticize the form of the court's findings, it is difficult to ascertain the precise reasons for

the rulings. From the Master's report, which the court adopts by reference as a part of the findings, it is quite likely that all of these rulings were based upon the finding that interstate commerce was neither involved, burdened, nor affected. If we should accept this finding as true we could readily approve the result, for the court would have been without jurisdiction and the appellants would not be entitled to the relief they asked. Again, if jurisdiction were conceded and there was a labor dispute involved, then it is quite doubtful if appellants could recover because they have not in every respect complied with the requirements of the Norris-LaGuardia Act. Holding as we do that the court had jurisdiction, we must reverse the order of the court which holds there was no jurisdiction, and in view of our holding that there was no labor dispute involved, and that the acts complained of amounted to an illegal secondary boycott, we must likewise reverse for those reasons.

In view of these conclusions we think the other conclusions of law, except as to the diversity of citizenship, are erroneous. The decree is reversed and the cause is remanded for further proceedings not inconsistent with this opinion.

TREANOR, C. J., Dissenting. I believe that the District Court correctly found as a fact and stated as a conclusion of law that the defendants' activities did not burden or affect interstate commerce within the prohibitions of the Federal Anti-Trust laws. The correctness of such finding and conclusion turns upon the often recognized distinction between direct and indirect effect of intrastate activities upon interstate commerce. The Supreme Court has pointed out that there is a necessary distinction, and that although "the precise line can be drawn only as individual cases arise, * * * the distinction is clear in principle"; and that Court has declared that this "distinction between direct and indirect effects of intrastate transactions upon interstate commerce must be recognized as a fundamental one, essential to the maintenance of our constitutional system"; and that "otherwise * * * there would be virtually no limit to the federal power, and for all practical purposes we should have a completely centralized government."[1]

In the Schechter case the defendants were engaged in

1. *Schechter Corporation* v. *United States*, 295 U. S. 495, 546, 548.

the business of slaughtering chickens and selling them to retailers. They bought their fowls from commission men in the market where most of the supply was shipped in from other states. When the defendants had made their purchases the poultry was trucked to their slaughter houses in Brooklyn for local disposition through retailers. The Supreme Court said that the interstate transaction in relation to that poultry then ended; and that neither the slaughtering nor the sales by defendants to retail dealers and butchers, who in turn sold directly to consumers, were transactions in interstate commerce. The Court in its opinion further pointed out that the poultry had arrived and had become commingled with the mass of property in the state, and that it was not held, used or sold by defendants in relation to any further transactions in interstate commerce and was not destined for transportation to other states. Consequently, the Court concluded that "decisions which deal with a stream of interstate commerce—where goods come to rest within a State temporarily and are later to go forward in interstate commerce—and with the regulations of transactions involved in that practical continuity of movement, are not applicable here." (P. 543.)

In the instant case the "current" or "flow" of interstate commerce ended in the plant of the plaintiff, Lake Valley Farm Products Inc. where the milk which came from outside the state of Illinois was commingled with milk produced in Illinois and processed for local consumption. The milk then was "held solely for local disposition and use * * *. It was not held, used, or sold by defendants (plaintiffs) in relation to any further transactions in interstate commerce and was not destined for transportation to other States."[2] The subsequent activities of the defendants which were directed to the local sale and distribution of milk could not interfere with the "flow" or "current" of interstate commerce in milk. Our question, then, becomes one of whether defendants' activities, which were strictly intrastate, were such that their effect was substantially and directly to restrain and burden the shipment and movement of milk from Wisconsin to Illinois while the milk unquestionably was in interstate commerce.

In the opinion of the Schechter case the Supreme Court pointed out that the case before it was not of the same sort as a prosecution of conspiracy to monopolize or re-

2. *Schechter* v. *United States*, *supra*, p. 543.

strain interstate commerce in violation of the Anti-Trust Act; but for purposes of differentiating between direct and indirect effect of intrastate acts the court had recourse to cases which involved the application of the Anti-Trust Act. The following statement is of special interest in view of the facts of the instant case (p. 547):

"Where a combination or conspiracy is formed, with the intent to restrain interstate commerce or to monopolize any part of it, the violation of the statute is clear. *Coronado Coal Co.* v. *United Mine Workers,* 268 U. S. 295, 310. But where the intent is absent, and the objectives are limited to intrastate activities, the fact that there may be an indirect effect upon interstate commerce does not subject the parties to the federal statute, notwithstanding its broad provisions. This principle has frequently been applied in litigation growing out of labor disputes."

The Supreme Court's discussion in the Schechter case of the two cases of *Local 167* v. *United States*[3] and *Levering & Garrigues Co.* v. *Morrin*[4] is most instructive for the problem of distinguishing between direct and indirect effect of intrastate activities of labor organizations upon interstate commerce. The case of *Local 167* v. *United States* involved a suit to enjoin a conspiracy to restrain and monopolize interstate commerce in violation of the Anti-Trust Act. In the trial of that case it was shown that marketmen, teamsters and slaughterers had conspired to burden the free movement of live poultry into the metropolitan area in and about New York City. Marketmen had organized an association, had allocated retailers among themselves, and had agreed to increase prices. To accomplish their objects, large amounts of money were raised by levies upon poultry sold, men were hired to obstruct the business of dealers who resisted, wholesalers and retailers were spied upon and by violence and other forms of intimidation were prevented from freely purchasing live poultry. Teamsters refused to handle poultry for recalcitrant marketmen and members of the shochtim union refused to slaughter. The Supreme Court said that the evidence disclosed that the defendants had conspired to burden the free movement of poultry into the metropolitan area of New York City and concluded that the "interference by appellants and others with the unloading, the transportation, the sales by marketmen to retailers, the

3. 291 U. S. 293.

4. 289 U. S. 103.

prices charged and the amount of profits exacted operate substantially and directly to restrain and burden the untrammeled shipment and movement of the poultry while unquestionably it is in interstate commerce." The Court further stated that it was not necessary to decide when interstate commerce ended and that which is intrastate began, since it was clear from the evidence that the activities of the defendants did substantially and directly restrain and burden the untrammeled shipment and movement of the poultry at a time when it unquestionably was in interstate commerce.

In *Levering etc.* v. *Morrin, supra,* suit was brought in a Federal District Court to enjoin the commission of certain acts by the defendants, the acts complained of being alleged to interfere unlawfully with interstate commerce and to be a violation of the Federal Anti-Trust Acts. The question presented to the Supreme Court was whether the allegations of the bill disclosed the commission of acts which unlawfully interfered with interstate commerce and constituted a violation of the Federal Anti-Trust Acts. It was stated in the opinion that the prayer for relief primarily was based upon the averment that the petitioners were engaged in fabricating and erecting structural iron and steel; that they were and had been for a long time, operating such business on the open shop method in relation to their employment of labor; that they had large contracts for the construction of work in the City of New York; that respondents were organizations of labor and officers and agents thereof who had conspired, and were attempting to compel petitioners and others to employ exclusively union labor in their building operations; that in pursuance of the conspiracy respondents had called out on strike petitioners' union employees, and conducted boycotts, and undertaken other injurious interferences which particularly were set forth in the bill. The bill also contained averments to the effect that all the steel used by the petitioners in the City of New York was transported from other states and that the purpose and intent of respondents was to prevent the use of said steel in buildings to be erected by petitioners; that the effect of the success of respondents would be, among other things, to destroy the interstate traffic of petitioners in steel.

After a recital of the foregoing factual allegations of the bill the Supreme Court stated: "All this, however, is no more than to say that respondents' interference with the erection of the steel in New York will have the effect of in-

terfering with the bringing of the steel from other states. Accepting the allegations of the bill at their full value, it results that the sole aim of the conspiracy was to halt or suppress local building operations as a means of compelling the employment of union labor, not for the purpose of affecting the sale or transit of materials in interstate commerce. *Use* of the materials was purely a local matter, and the suppression thereof the result of the pursuit of a purely local aim. Restraint of interstate commerce was not an object of the conspiracy. Prevention of the local use was in no sense a means adopted to effect such a restraint. It is this exclusively local aim, and not the fortuitous and incidental effect upon interstate commerce, which gives character to the conspiracy. * * * If thereby the shipment of steel in interstate commerce was curtailed, that result was incidental, indirect and remote, and, therefore, not within the anti-trust acts, as this court, prior to the filing of the present bill, had already held. *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344, 410-411; *United Leather Workers* v. *Herkert & Meisel Trunk Co.*, 265 U. S. 457. The controlling application of these cases to the present one is apparent from the review of them in the later case of the *Industrial Assn.* v. *United States*, 268 U. S. 64, 77-78, 80-82."

The discussion and reasoning of the Supreme Court in the two foregoing cases, *Local 167* v. *United States* and *Levering etc.* v. *Morrin*, furnish a helpful, if somewhat general guide for our appraisal of the intrastate activities of the defendant labor union. In the former case the defendants included approximately all of the groups and individuals who handled poultry from the moment it was delivered from interstate transportation to commission men in New York to its final sale to consumers. The facts disclose an organized effort to dominate the poultry business in the New York City area by securing control of prices and profits in the business and control of the unloading, transportation and sales of all poultry coming into that area through the channels of interstate commerce, such domination and control beginning at the very instant of the transfer from interstate to intrastate transportation. The Supreme Court summed up the factual situation and its obvious effect in the following statement: "The interference by appellants and others with the unloading, the transportation, the sales by marketmen to retailers, the prices charged and the amount of profits exacted operate substantially and directly to restrain and burden the untrammeled

shipment and movement of the poultry while unquestionably it is in interstate commerce."

In the Levering case the activities of defendants were intended to halt or suppress building operations as a means of compelling the employment of union labor and not "for the purpose of affecting the sale or transit of materials in interstate commerce;" although it was obvious that the activities of the defendants were in fact indirectly affecting interstate commerce in steel. But as stated in the opinion of the Supreme Court, the "*use* of the materials was purely a local matter, and the suppression thereof the result of a purely local aim." The Supreme Court further stated that it was this exclusively local aim and not the "fortuitous and incidental effect upon interstate commerce" which gave "character to the conspiracy," and that any curtailment of the shipment of steel in interstate commerce was an incidental, indirect and remote result and not within the prohibitions of the Anti-Trust Acts.

In my opinion the facts of the instant case bring it within the reasoning and holding of the Supreme Court in *Levering* v. *Morrin.*

There is no evidence of an actual intent on the part of defendants to interfere with interstate commerce. And there is no such direct and substantial effect upon interstate commerce resulting from defendants' conduct as to furnish a necessary inference of the existence of the intent.[5] The sole aim of the defendants in their interference with the local sale and distribution of milk was to secure a method of sale and distribution which would be more advantageous to them; and, in the words of the Supreme Court in the opinion in the Levering case, "it is this exclusively local aim and not the fortuitous and incidental effect upon interstate commerce, which gives character to the conspiracy;" and if as a result of the defendants' activities the shipment of milk in interstate commerce was curtailed "that result was incidental, indirect and remote, and, therefore, not within the anti-trust acts."

The "local aim" and the results of the activities of the defendants, both in the Levering case and in the instant case, contrast sharply with those of the defendants in the Local 167 case. There the aim, and the actual result of the organized activities of the defendants, was to directly intercept and control substantially all of the poultry com-

5. See the two Coronado cases, 259 U. S. 344 and 268 U. S. 295.

ing into the New York City area in the channels of interstate commerce and to intercept the "current" of commerce in poultry at the very moment of transition from interstate to intrastate commerce.

In *Blankenship* v. *Kurfman*[6] this Court had occasion to pass upon the contention that certain intrastate activities of defendant unions and members thereof interfered with interstate commerce and amounted to a conspiracy or combination in violation of the Sherman Anti-Trust Act. It was pointed out in the opinion in that case that cases arising under the National Labor Relations Act do not involve the problem of determining the existence of a conspiracy or combination in restraint of commerce, to the existence of which it is essential that there be an intent to restrain or burden interstate commerce.

We are not concerned in this case with the question of the power of Congress under the Commerce Clause to regulate intrastate activities of labor organizations when these activities affect, or tend to affect, indirectly the current of interstate commerce. No doubt congressional findings and declaration of policy similar to those of the National Labor Relations Act, but directed to the intrastate activities of employees in their relation to commerce, would supply a basis for valid legislation aimed at the regulation of these activities. But the reasoning and holding in the *Schechter* case and in the *Levering* case, *supra*, surely raise doubt of the validity of the application of any such legislation to facts such as are found in the instant case. But no such legislation has been enacted and this suit is controlled by the decisions which have construed and applied the Anti-Trust Acts.

The District Court, as a further ground for refusing to grant the requested injunction, concluded that the facts of the controversy presented "a case involving or growing out of a labor dispute" within the terms of the Norris-LaGuardia Act. Assuming that the facts made "a case" within the terms of the Norris-LaGuardia Act, the court properly refused to grant the injunctive relief since the evidence did not disclose any basis for findings which the Act requires as a condition precedent to the exercise of the court's power to issue restraining orders and injunctions.

The language of the Act forbids the granting of a restraining order or injunction, except upon conditions set out in the Act, "in a case involving or growing out of a

6. 96 Fed. 2nd. 507.

labor dispute," and in a subsequent section expressly defines the term "a case involving or growing out of a labor dispute." The congressional intent as evidenced in Section 13 (a) (b) and (c) of the Act[7] is to define two types of cases "involving or growing out of a labor dispute." The first type is defined in terms of the persons who are disputing, the language being that "a case shall be held to involve or grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft or occupation; or have direct or indirect interests therein; or who are employees of the same employer or who are members of the same or an affiliated organization of employers or employees * * *." And it is further provided that it is immaterial whether the dispute is between employer or employees, or between employers and employers, or between employees and employees. In the foregoing type of "case involving or growing out of a labor dispute" there is no express limitation by reason of the subject matter of the dispute.

The last grammatical clause of Section 13 (a) defines the second type of case in terms of the nature of the "labor dispute" as well as in terms of "persons participating in the labor dispute." To fall within this type of "case involving or growing out of a labor dispute" the case must involve conflicting or competing interest in a "labor dispute," as this term is subsequently defined in Section 13 (c); and the "labor dispute" must involve "persons participating or interested," as that term is subsequently defined in Section 13 (b). In this second type of "case involving or growing out of a labor dispute" the subject matter of the dispute is limited to a particular kind of controversy, but the classes of persons who may be involved include persons whose interest is neither that of an employer nor of an employee. And in *New Negro Alliance* v. *Grocery Co.*[8] the Supreme Court held that the case was one "involving or growing out of a labor dispute" although the relation of employer and employee did not exist between the adverse parties in the case and although the defendants were not engaged in any business competitive with that of the plaintiff and even though the officers, members, or representatives of the defendant association were not engaged in the same business or occupation as the plaintiff employer or its employees. Also the Supreme Court held that the dispute was a labor dispute within the defini-

7. Act of March 23, 1932, C. 90, 47 Stat. 70, 73, 29 U. S. C. A. Sec. 113.

8. 303 U. S. 552.

tion of Section 13 (c) regardless of the fact that it did not involve terms and conditions of employment in the sense of wages, hours, unionization or betterment of working conditions.

In view of the Supreme Court's interpretation of the term "labor dispute" as defined in Section 13 (c), and its interpretation of "persons participating or interested," as defined in Section 13 (b), I believe that the facts of the instant case bring it within the second type of "case involving or growing out of a labor dispute."

Also I think that this case comes within the first type of case referred to above. It involves persons who are "engaged in the same industry, trade, craft or occupation" and is a dispute between the plaintiffs, consisting of employers and one association of employees, a C. I. O. local, and the defendants, another association of employees, an A. F. of L. local. As indicated above, I do not think that the term "labor dispute" as used in Section 13 (a) is limited by the definition of "labor dispute" in Section 13 (c). The primary intent of Section 13 (a) (b) and (c) is to define two types of cases "involving or growing out of a labor dispute," and it is only as an incident to the expression of the primary intent that "labor dispute" and "persons participating or interested" are defined. The terms "labor dispute" and "persons participating or interested" are defined in (b) and (c) merely for the purpose of clarifying the definition of the second type of case which is defined as a case which "involves any conflicting or competing interests in a 'labor dispute' * * * of 'persons participating or interested' therein * * *." The possible kinds of disputes which can be involved in this latter type of "case" is less than those of the first type of case because of the limitation imposed by the restricted definition of "labor dispute" in 13 (c). But the classes of persons who may be involved are less restricted than in the first type of case because of the broad terms of the definition of "persons participating or interested."

I agree with the District Court's conclusion that the facts present "a case involving or growing out of a labor dispute" as such "case" is defined in the Norris-LaGuardia Act.

Endorsed: Filed November 29, 1939. Frederick G. Campbell, Clerk.

And on the same day, to-wit: On the twenty-ninth day of November, 1939, the following further proceedings were had and entered of record, to-wit:

Wednesday, November 29, 1939.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Hon. Walter E. Treanor, Circuit Judge.

Lake Valley Farm Products, Inc., a corporation; Lake View Co-operative of Watertown, Wisconsin, an Agricultural Co-operative Corporation of the State of Wisconsin; Amalgamated Dairy Workers Local, Industrial Union No. 819,

Plaintiffs-Appellants,

6900 *vs.*

Milk Wagon Drivers' Union, Local 753, International Brotherhood of Teamsters, Chauffers, Stablemen and Helpers of America, a voluntary association; Robert C. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, Alvin F. Richards and Joseph L. Patterson,

Defendants-Appellees.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On Consideration Whereof: It is now here ordered, adjudged and decreed by this Court that the Decree of the said District Court in this cause be, and the same is hereby reversed with costs; and that this cause be, and the same is

hereby remanded to the said District Court for further proceedings not inconsistent with the Opinion of this Court.

And afterwards, to-wit: On the fourteenth day of December, 1939, there was filed in the office of the Clerk of this Court, a Petition for a Rehearing, which said Petition for a Rehearing is in the words and figures following, to-wit:

No. 6900 381

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

LAKE WALLEY FARM PRODUCTS, INC., a corporation; AMALGAMATED DAIRY WORKERS, LOCAL INDUSTRIAL UNION No. 319, a voluntary unincorporated association; LAKE VIEW CO-OPERATIVE OF WATERTOWN, WISCONSIN, an agricultural cooperative corporation of the State of Wisconsin,

Plaintiffs-Appellants,

vs.

MILK WAGON DRIVERS UNION, LOCAL 753, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA, a voluntary unincorporated association; ROBERT G. FITCHIE, JAMES KENNEDY, STEVE SUMNER, FRED C. DAHMS, F. RAY BRYANT, ALVIN P. RICHARDS and JOSEPH L. PATTERSON,

Defendants-Appellees.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Honorable Philip L. Sullivan, Judge Presiding.

Petition for Rehearing by Appellees.

DAVID A. RISKIND,
ABRAHAM W. BRUSSELL,
Chicago, Illinois,
Counsel for Defendants-Appellees

U. S. C. C. A. 7
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FREDERICK G. CAMPBELL
CLERK

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IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

LAKE VALLEY FARM PRODUCTS, INC., a corporation; AMALGAMATED DAIRY WORKERS, LOCAL INDUSTRIAL UNION No. 819, a voluntary unincorporated association; LAKE VIEW CO-OPERATIVE OF WATERTOWN, WISCONSIN, an agricultural cooperative corporation of the State of Wisconsin,

Plaintiffs-Appellants,

vs.

MILK WAGON DRIVERS UNION, LOCAL 753, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA, a voluntary unincorporated association; ROBERT G. FITCHIE, JAMES KENNEDY, STEVE SUMNER, FRED C. DAHMS, F. RAY BRYANT, ALVIN F. RICHARDS and JOSEPH L. PATTERSON,

Defendants-Appellees.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Honorable Philip L. Sullivan, Judge Presiding.

Petition for Rehearing by Appellees.

Now come Milk Wagon Drivers Union, Local 753, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, a voluntary unincorporated association; Robert G. Fitchie, James Kennedy, Steve Sumner, Fred C. Dahms, F. Ray Bryant, Alvin F. Richard and Josepn L. Patterson, Defendants-Appellees, by their attorneys, David A. Riskind and Abraham W. Brussell, and respectfully petition that this court grant a re-

hearing of the above entitled cause, and that upon further consideration the decision of this honorable court heretofore entered on November 29th, A. D. 1939 may be vacated and the judgment of the District Court be affirmed.

In support of said petition your petitioners respectfully state as follows:

I.

The court erred in its interpretation of the facts.

This court has disregarded the findings of fact made by the Master in his Finding of Facts (R. pp. 203-223), especially Findings Nos. 28-44. In this Petition for Rehearing we are not permitted to set out the facts in detail, but we respectfully urge that this court reconsider the Findings of Facts made by the Master.

In addition, this court has disregarded the specific facts set out in our brief in pages 8-11. These facts were in the main undisputed. For purposes of clarifying the facts shown by the Record we filed a Supplemental Record in this court. We made specific references to facts shown in Supplemental Record at the following pages: 5-8, 10-11, 21, 50-52, 57, 59-61, 61-62, 63, 67-68.

We respectfully suggest that a reconsideration of such references by this Court will conclusively show that the defendant Union was concerned with the "hours and wages evils" of the vendor system, and was *not* concerned with the selling of cut-rate milk as such that was sold by 119 of 120 Union Dairies in the City of Chicago (Suppl. R. p. 68).

Further, plaintiffs did not dispute that the wages paid by vendors to their helpers were considerably less than

the wages earned by members of defendant Union. This undisputed fact is not considered by the court.

II.

Errors of Law.

With respect to the several theories of law adopted by the majority of this court, we point out that the majority and minority opinions of this court disclose that the majority opinion *adopts* the law urged by the *plaintiffs* herein, and the minority opinion adopts the law urged by the *defendants* herein. It is, of course, our contention that the minority opinion is correct in its view of the law, and that the majority opinion has erred in its statement of the law.

It is not the function of this Petition for Rehearing to *reargue* all the theories of law adopted by the majority opinion for that would be in substance repeating the contentions advanced in our original brief. But we still urge that *such* contentions are correct statements of the law.

On some of these issues of law we call the court's attention to decisions handed down within the last three weeks which tend to support our analysis and tend to rebut the analysis advocated by plaintiffs and adopted by the majority of this court. For purposes of brevity, we outline the legal propositions as follows:

1. The majority of this court erred in ruling that picketing of retail milk stores in Chicago constitutes a restraint of interstate commerce or trade within the meaning of the Sherman Act and the Clayton Act. See decision in *Leader, et al.* v. *Apex Hosiery Company,* decided by the Circuit

Court of Appeals for the Third Circuit, on November 29, A. D. 1939, reported in Commerce Clearing House Labor Law Service, par 18,482. Also, see our brief pp. 22-27, 91-137.

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2. The majority of this court erred in ruling that the defendants' activities constituted an unlawful conspiracy within the prohibition of the Sherman and Clayton Acts. See decision in *Leader, et al.* v. *Apex Hosiery Company,* decided by the Circuit Court of Appeals for the Third Circuit on November 29, A. D. 1939, reported in the Commerce Clearing House Labor Law Service, par. 18,482. See our brief pp. 22-27, 91-137.

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3. The majority of the court erred in ruling that the activities of the defendant constituted a monopoly in violation of the Sherman and Clayton Acts. See our original brief pp. 25-26, 111-115.

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4. The majority of the court erred in ruling that there was no labor dispute within the meaning of the Norris-LaGuardia Act. See decision in *Fur Workers' Union* v. *Fur Workers' Union,* decided by the United States Supreme Court in a *per curiam* opinion on Monday, Decemcember 11, A. D. 1939. See also our original brief pp. 12-17 and 30-76.

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5. The majority of this court erred in ruling that the existence of a so-called secondary boycott prevented the defendants from claiming the benefit of the provisions of

the Norris-LaGuardia Act. See our brief at pp. 13, 18, 20-21, 30-66, 80-90.

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6. The majority of this court erred in ruling that the defendants' constitutional right to free speech under the "due process clause of the 14th Amendment to the Federal Constitution did not permit them to conduct peaceful picketing. See *Schneider* v. *Irvington,* 84 Lawyer's Edition, 115-118, 119, 121 (decided November 22, A. D. 1939). See also our brief at pages 18-19, 76-79.

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7. In addition, we respectfully urge that the court's opinion fails to indicate that the defendants on this appeal urge that the Federal Anti-Trust Laws were not applicable to labor organizations. See our original brief at pp. 27, 28, 138. It is respectfully suggested the opinion of this court should indicate that this contention was expressly made before this court.

PRAYER.

Wherefore, for the foregoing reasons, defendants-appellees pray that this court grant a rehearing in the above entitled cause.

Respectfully submitted,

DAVID A. RISKIND,
ABRAHAM W. BRUSSELL,
Counsel for Defendants-Appellees.

Endorsed: Filed December 14, 1939. Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the twenty-second day of December, 1939, there was filed in the office of the Clerk of this Court, an Answer to Petition for Rehearing, which said Answer is in the words and figures following, to-wit: